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United States

Circuit Court of Appeals

For the Ninth Circuit.

CAL-BAY CORPORATION, MARIA FARIA,
JOSEPH FARIA, JR., EDWARD FARIA
and MAE E. ROCHE,

Appellants,

vs.

UNITED STATES OF AMERICA,

Appellee

Transcript of Record

In Three Volumes

VOLUME III

Pages 913 to 1290

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for the Northern District of California,
Southern Division

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(Testimony of John H. Wents, Jr.)

Q. You discussed it with Counsel and the various parties defendant in the preparation of this case, didn't you?

A. I told them I would furnish them a map which would be authentic insofar as the location of the fields was concerned.

Q. Didn't you go into the question at all, when this map came before you, as to what the rights or leases were bought and sold for or were to be bought for in these various fields that are spotted on there?

A. It had no bearing on the subject problem.

Q. You mean to say that what the mineral rights or leases in the fields in northern California as shown on that diagram were bought and sold for has no bearing on the problem before this Court?

A. No, sir, because this date of valuation, or the dates of valuation that we are using are subsequent to the drilling of the Faria well, subsequent to findings in the Faria well. I can't base my opinion except upon comparative values with something which is parallel to that. I can't base any opinion of what a leasehold might pay a landowner for a lease and then turn around and sell it to a major company for. Such a transaction does not even meet the definition of fair market value.

Q. Let me ask you, was the field that was dubbed by the name Nigger Head Dome shown on your map?

A. I don't know whether it is or not. [746]

Q. Do you know where that field is?

A. Nigger Heaven Dome?

(Testimony of John H. Wents, Jr.)

Q. Yes.

A. I do not think I know of it. Was that discovered on or about our valuation date or subsequent to it?

Q. Don't you know, Mr. Wents? Do you know anything about—it has been mentioned here—the explorations of the George F. Geddy Oil Company in northern California? You have been using his name.

A. Counsel, I am employed by J. Paul Geddy, who happens to own the George F. Geddy Corporation, but I am employed by him as an individual, not by the George F. Geddy Corporation. I was employed by the George F. Geddy Corporation on one land or on one operation.

Q. Do you know anything about his exploration for gas and oil in northern California?

A. Yes, J. Paul Geddy.

Q. George F. Geddy Oil Company?

A. Two different things.

Q. You mean you do not know anything about it?

A. I am perhaps familiar with that, because I have a report in my office of the exploration of every individual or company in California covering the last fifteen years. I am furnished as I am here daily, the scout reports on operations which are taking place in the state. I am not familiar with the colloquial term, "Nigger Head" or "Nigger Heaven" Dome, something like that.

Q. Do you know anything about oil explorations that were made [747] by the various oil companies in the vicinity of Woodland?

(Testimony of John H. Wents, Jr.)

A. I believe that I have—yes. I would say I have gone over the records on some of those explorations.

Q. Did you find in that field two explorations had encountered high pressures, high rates of flow of gas showings?

A. I don't remember that.

Q. You do not remember that?

A. Woodland is quite some distance from this property.

Q. It is further than Potrero Hills, isn't it?

A. I believe so.

Q. You do not know what those leases and rights are for sale for up there west of Woodlands, do you?

A. As I say, I would disregard it even if I did know it.

Q. If you found it was a dollar an acre, you would disregard it?

A. It wouldn't make any difference.

Q. Do you know what the lease rights were bought for at Honker Bay in the period of exploration?

A. I heard it in court this morning, I believe, from you.

Q. \$5.00 an acre?

A. That is the first I heard of such a price.

Q. Do you know anything to the contrary about that field in the period of exploration?

A. If I did it would not make any difference in my appraisal.

Q. If you did you would tell us, wouldn't you?

A. I would tell you, and it would not make any difference in my appraisal. [748]

(Testimony of John H. Wents, Jr.)

Q. Do you locate Kirby Hills on your map?

A. Yes, it is the general vicinity there. We pointed it out just a little while ago.

Q. Kirby Hills? I do not think we pointed out Kirby Hills. Mr. Bradford did not know where it was.

A. I said that Kirby Hills lies southeasterly of Potrero Hills.

Q. Southeasterly of Potrero Hills?

A. Yes.

Q. In other words, it is another neighbor of Honker Bay, is it?

A. Five miles away, about.

Q. By the way, while we are on the subject, it is about five miles from Honker Bay to Potrero Hills?

A. I would say it is about six there.

Q. The yellow piece represents the Cal Bay property, doesn't it? A. Yes, it does.

Q. Do you know what Kirby Hills rights and leases were bought for during the period of the exploration in that field?

A. I heard counsel say something about it this morning.

Q. \$10.00 an acre? A. Yes.

Q. Do you know anything to the contrary about that during the period of exploration?

A. No, I do not, and it would not make any difference if I did.

Q. From where, then, do you select this figure of \$850, as I have said, in place of \$8.50 or some other figure?

(Testimony of John H. Wents, Jr.)

A. I select that figure from transactions which I believe are comparable—in other words, a transaction between oil [749] companies.

Q. Are you referring to any transaction in gas exploration in northern California?

A. There are no such transactions in northern California, to my knowledge, so I had to go to where I knew there were transactions of that type.

Q. To what field did you go?

A. I went to a wildcat area known as the Bandini area of Los Angeles County.

Q. In Los Angeles County. What is the name of that place? A. Bandini.

Q. Whereabouts is Bandini located in Los Angeles County?

A. About eight miles or ten miles easterly of the City of Los Angeles—that would be the City Hall, roughly. It might be slightly further than that from the City Hall.

Q. Is the place known by any field name, then or now?

A. It was known by the name of Mines Field, from the fact that that is where the old Mines Airport was located.

Q. That is where the old Mines Airport was located?

A. About three miles from the subject property, or the property I was considering, a well has been brought in—I believe a couple of wells have been brought in—and the area is referred to now, I

(Testimony of John H. Wents, Jr.)

think, as the Veil area. However, with respect to the property I considered it was in the Bandini area.

Q. Has that property been explored?

A. That property had been drilled on to a depth of approximately eight thousand feet when this transaction took place. There had been certain [750] showings encountered in the well.

Q. Oil exploration or gas exploration?

A. I do not know how we can differentiate the two, because we have to tell what it is going to be after we turn it into the tanks or the traps.

Q. What were they looking for, do you know?

A. Looking for minerals, I would say, of the hybocarbon series, whether it was oil or gas.

Q. Were there any other before that, or had there been any other oil or gas provings in Los Angeles County before this transaction you are speaking about?

A. In the immediate vicinity of this area?

Q. In Los Angeles County.

A. Oh, yes, there had been some.

Q. Many?

A. Quite a few.

Q. And you refer us to a transaction that took place in this Bandini property in Los Angeles County for support for the conclusion that you say you came to about this property?

A. That was one of the things that I considered.

Q. Have you any other examples that you would refer us to geographically——

A. Yes.

(Testimony of John H. Wents, Jr.)

Q. —as something from which we can say you resolved your figure of \$850 an acre? A. Yes.

Q. Where is another?

A. In the vicinity of the townsite of Edison. That would be on the Tehachapi Road, about ten or [751] twelve miles easterly of Bakersfield.

Q. In the Bakersfield area. Have you any other that you would refer us to from which you have resolved your figure? A. Yes.

Q. Where is another location?

A. In the so-called Alhambra Park area, Los Angeles County.

Q. In Los Angeles County again. Have you any other?

A. I believe that is sufficient. To my knowledge, there are others, but I did not even bother to look up the data on them.

Q. Is it fair to say that in order to support or resolve the figure you have stated or asserted to be the market value of this property that you have obtained from any figures of explorations in northern California? Is that fair to say?

A. No, it is not.

Q. Have you used the figures for which rights or leases are bought and sold for in northern California during the period of exploration to support this figure? A. No, I have not.

Q. You have not?

A. For the reason that the transactions I am familiar with in northern California are the transactions between a lease broker or a land develop-

(Testimony of John H. Wents, Jr.)

ment man of a major oil company dealing with a landowner direct, and I do not believe that that meets with the definition of a fair trade.

Q. What do you mean? You say the transactions you know of in northern California are lease transactions dealing with [752] whom?

A. With landowners.

Q. With landowners?

A. Landowners who have not been advised of what they might be possesd.

Q. Oh, I gather. In other words, you mean all the transactions in northern California smack of overreaching on the part of the lease brokers, is that it?

A. Those that I am familiar with smack very much of that way.

Q. That is, let us say, the predicate or the basis for your refusal to take into account the prices for which rights and leases are bought and sold for in northern California in exploration?

A. They are, definitely.

Q. (By the Court): I suppose that never happens in southern California?

A. It does, your Honor, but it does not fit the definition of what I used to predicate my values upon in my estimation. It takes place everywhere.

Q. (By Mr. Bourquin): What basis did you employ to compute or arrive at your figure that you gave us representing the value of the royalty interest, let us say, of Mary Faria in parcel 59?

A. Comparative sales.

(Testimony of John H. Wents, Jr.)

Q. Without taking the time, are you referring now to these sales that you have told us about from Los Angeles County and the Bakersfield area?

A. Not those in particular. Others.

Q. Did you employ any sales or sales data with respect to sales made in northern California?

A. I am not familiar [753] with any sales of royalty interests in northern California of the type which we are dealing with.

Q. What was the valuation figure that you expressed as the worth of the royalty interest of Mary Faria in Parcel 59 covered by the Cal Bay lease?

A. I believe my figure was based upon \$25 per acre per cent as the highest value employed, and from there on I dropped down to maybe \$1.00 per acre per cent.

Q. What did it come to?

Q. (By Mr. Scampini): Are you referring to the royalty interest in the Cal Bay lease, Counsel, the Joseph Faria lease, or both leases?

Mr. Bourquin: Just Parcel 59, the Cal Bay lease.

Mr. Scampini: Parcel 59 is split into two parts: one is owned by Joseph Faria and the other by Cal Bay.

Mr. Bourquin: In the question I said Cal Bay.

The witness: \$85,000, roughly, is the value I testified to.

Q. (By Mr. Bourquin): \$85,000 is the value of the interest reserved by the lessor in that parcel of property covered by the Cal Bay lease, is that correct?

A. Yes.

(Testimony of John H. Wents, Jr.)

Q. What did you assume would be the production of this well if the possibility that you started proved up?

A. I did not assume any production figure. I assumed what their comparable acreage was trading for in the open market. [754]

Q. Do you know of any such trading in northern California in oil or gas exploration?

A. Yes, I do.

A. In exploration?

A. Yes, I do.

Q. Where?

A. In the vicinity of the town of Shafter.

Q. Where is that, Mr. Wents?

A. Oh, it might be in Kern County—

The Court: He is asking about northern California.

Mr. Bourquin: I want to get it in northern California. Don't get down into the Coalinga or Bakersfield areas.

The Witness: No, I do not know of any in northern California.

The Court: I think we had better take the morning recess at this time. Ladies and gentlemen, will you bear in mind the instructions of the Court.

(Recess.) [755]

Q. (By Mr. Bourquin): Mr. Wents, did you consider that the Richfield Oil Company, following its exploration in Potrero Hills No. 1, No. 2, and No. 3, had obtained sufficient information to appreciate what they were dealing with?

A. I gave that some weight.

(Testimony of John H. Wents, Jr.)

Q. Did you figure that on any leases that are around there?

A. Not necessarily.

Q. It wouldn't be a concern likely to be over-reached, would it?

A. All of the concerns make mistakes.

Q. All of the concerns make mistakes. Did you consider that Richfield over there, following its pressures, gas, blow-outs in the Potrero Hills, abandoned the wells leaving them go to the lessor to offer for a dollar an acre?

A. No, I did not consider that to the full extent of the way your statement was made. Let me explain that, your Honor. Oftentimes the property, or potential of possible oil property is sold for a higher price prior to development and production than after production has been established; that is between oil companies and individuals who should know what they are doing.

Q. You figured that you might take a gamble.

A. Gamble is one word for it. Speculation is another word for it.

Mr. Bourquin: I think that is all.

Further Direct Examination

By Mr. Scampini:

Q. Just one question, Mr. Wents. When you based upon your experience, is it the opportune time for the sale of [756] the leasehold estate by a lessee to a purchaser willing to buy and having

(Testimony of John H. Wents, Jr.)

knowledge of the facts and circumstances surrounding the activities on the property?

A. Well, there are a number of opportune times.

Q. Please name them.

A. The first opportune time for the sale is as of the time a company acquires a lease for development of a property. The second is after the actual drilling commences on the property. Now the lowest price paid is at the first time, and the higher price is generally paid as of the second time I mentioned. Thirdly, as the shows of a well are understood by the general public or lessor, that is generally the price paid then being a higher price even than before. Fourth, is as of when you have completed drilling, or when that is imminent, and, fifth, is after the time production has been actually established on the property. Now, between the fourth and fifth times, sometimes a more advantageous deal can be made purely from the showings than can be made after production might have been established.

Q. Would that reasoning also apply in the case of the purchase and sale of royalty interests of the lessors?

A. It would be the same series.

Q. With reference to the Bandini transaction that you referred to as being one of the transactions which you took into consideration in arriving at your conception of the fair value of this property, will you please state between whom that [757] transaction was entered into?

A. That transaction was entered into between C. G. Willis, who is the president of Basin Oil Com-

(Testimony of John H. Wents, Jr.)

pany and the General Exploration Company, and the Rio Honda Corporation jointly, with the purchaser being the Shell Oil Company of California.

Q. On what date did the transaction take place, on or about?

A. May, 1945; I believe sometime about that time.

Q. With what did the transaction concern itself?

A. It concerned itself with certain leasehold interests and a well which had been drilled to a certain depth.

Q. Was the well on commercial production at the time the transaction was negotiated?

A. No, it was not.

Q. How much acreage was there embraced within the transaction of the leases?

A. Several hundred acres.

Q. What was the consideration paid for the assignment of the leases by the owners to the purchaser?

A. The Shell Company paid——

Mr. Bourquin: Your Honor, I think that this last reference to what has been paid down in known oil country like Kern County and Los Angeles Country is very remote and speculative to apply to this transaction, and we object on that ground, speculation and remote. It does not meet the test as the Supreme Court has announced for ascertainment of market value.

Mr. Scampini: We are dealing in this present case with like transactions as on the subject

(Testimony of John H. Wents, Jr.)

property. There is not [758] any substantial difference between transactions in oil and gas leases with respect to gas fields than there is with respect to oil fields. One is a concomitant of the other.

The Court: I don't think this is entirely competent from the point of view of proximity, nor competent from the point of view of redirect examination. I will sustain the objection. Counsel merely asked whether or not the witness based his opinion on what the transactions were that he based his opinion on. He located them geographically, but counsel did not ask him what the transactions were. He was merely trying to establish whether or not the transactions upon which the witness based his opinion were geographically in northern California or southern California. I will sustain the objection.

Mr. Scampini: I now make offer of proof as to the nature of the transactions, may it please the court.

The Court: Well, it is not necessary for you to do that.

Mr. Scampini: Very well, for the purpose of the record——

The Court: I have sustained the objection. If I am in error on that it can be corrected by a higher court. I just want to ask another question. I wanted to satisfy my curiosity as to some of these matters of royalty interest. I think you said that you appraised the royalty interest of Maria Faria at 12½ per cent in the 208-acre tract at \$65,250.

A. I believe something like that.

(Testimony of John H. Wents, Jr.)

Q. That is at the rate of \$5000 a percent, approximately? [759] A. Yes.

Q. Do you happen to know what the highest rate per cent that has ever been paid for lessors' royalty interest in the State of California is?

A. No, I don't but I know of a sale as high as \$140,000 a per cent in land not proven yet. That was at Coalinga.

Q. Do you know what the highest per cent that has ever been paid the lessor royalty interest in either the Kettleman fields or Coalinga was?

A. \$140,000 in Coalinga. With respect to leasehold interest in Kettleman Hills the Amerada Petroleum Corporation purchased from the Union Oil Company one-half of a 160-acre lease for the sum of eight million dollars, four million dollars in cash and four million dollars out of oil.

Q. That was on the basis of a property already proven?

A. No, that had not been drilled at the time of the sale.

Q. It hadn't been drilled?

A. No, not that particular lease, had not been drilled at the time, according to the information I have. That was the Amerada King lease.

The Court: I have no further questions.

Mr. Scampini: That is all.

Mr. Bourquin: That is all.

(Defendants rest.)

Mr. Bourquin: I will call Mr. Crisman. [760]

CHESTER C. CRISMAN

called as a witness on behalf of the plaintiff; sworn.

The Clerk: Will you state your name to the court and jury?

A. Chester C. Crisman.

Direct Examination

By Mr. Bourquin:

Q. Mr. Crisman, what is your occupation or business?

A. I am a special agent for the Federal Bureau of Investigation.

Q. Where is your station or division assignment?

A. I am assigned to the Los Angeles Field Division, but I live and work in Bakersfield.

Q. Did you in the course of your work as an investigator for the Federal Bureau of Investigation have occasion to interview Mr. E. A. Bender at Bakersfield recently?

A. Yes, I did.

Q. Can you tell us when and where it was that you interviewed the gentleman?

A. I interviewed him at his office in Bakersfield. I can't recall the exact date, but, roughly, it was, I believe in November of—October or November of 1946.

Q. Did you interview him concerning the matter that we have here under discussion?

A. Yes.

Q. Did you take a statement from him?

A. No, I did not. You mean a written statement?

Q. I mean did he discuss the matter with you and did you make a memorandum or report of it?

A. Yes, I did.

(Testimony of Chester C. Crisman.)

Q. Can you tell us, Mr. Crisman, what Mr. Bender told you at [761] that time concerning their operations on this Cal Bay lease? A. Yes.

Mr. Scampini: May it please the Court, we object to the question as being improper impeachment. The foundation has not been laid.

The Court: Well, see if my memory is correct. Wasn't the witness Bender interrogated by Mr. Bourquin as to a conversation with the agent?

Mr. Scampini: Yes, your Honor. I think the proper form of impeachment would be to ask the witness whether certain questions were asked of Mr. Bender and whether Mr. Bender did or did not make certain answers.

Mr. Bourquin: I can do that. I was shortening the matter, but we can follow that if your Honor thinks I should.

The Court: Read the question.

(Question read by the reporter.)

The Court: I think, strictly speaking, counsel's objection may be good. Counsel says he was doing it to shorten time.

Mr. Scampini: I know, but rambling along like this——

The Court: Very well. Ask the specific question.

Q. (By Mr. Bourquin): On the occasion of the time in question that you mentioned, Mr. Crisman, did Mr. Bender tell you that the equipment employed in the drilling of the Cal Bay Corporation here had been unloaded on the concern by one Harold Henry? [762]

(Testimony of Chester C. Crisman.)

Mr. Scampini: We object to that as leading and suggestive.

The Court: A leading question can be asked in impeachment.

Mr. Scampini: We will withdraw the objection.

The Court: The witness should be asked the precise question.

Mr. Scampini: We will withdraw the objection.

The Witness: Would you repeat the question?

(Question read by the reporter.)

A. That's right, he told me that.

Q. (By Mr. Bourquin): Did Mr. Bender tell you on that occasion that the whole thing originated in a fraud, by a fraudulent desire by Mr. Henry to unload some old machinery?

Mr. Scampini: Mr. Bender denied making that statement. It is not proper impeachment.

The Court: I will overrule the objection. It is proper impeachment.

The Witness: Shall I answer?

The Court: Yes.

The Witness: Yes, Mr. Bender made that statement to me.

Q. (By Mr. Bourquin): Did Mr. Bender tell you on that occasion that Mr. Bender had sold Mr. Faria on the idea that there was some oil up there at the Cal Bay lease where he could use that rig?

A. Yes, he told me that.

Q. Did Mr. Bender tell you that Mr. Henry had told him that [763] he had located Mr. Faria as a sucker for his machinery?

(Testimony of Chester C. Crisman.)

A. Yes; he made that statement to me.

Q. Did Mr. Bender tell you on that occasion that any competent man would know they could not get any oil in that country?

A. I believe Mr. Bender's statement was that any competent oil man would know they could not get oil in that country because it was gas country.

Mr. Bourquin: That is all.

Cross-Examination

By Mr. Scampini:

Q. Mr. Crisman, what was the object or purpose of your checking on Mr. Bender?

A. I went to see Mr. Bender to see if he could help me locate any members of the drilling crew who had been employed on this rig.

Q. What did you want to locate any of the members of the drilling crew who had worked on this rig?

A. I wanted to interview them regarding what had happened at the time the well blew out.

Q. Who wanted you to make the investigation?

A. Well, I don't know just exactly how to answer that. I was requested by my office, my supervisors in Los Angeles, to make it, and they had in turn been requested by the San Francisco office.

Q. Were you able to locate any of the boys who had worked on the rig?

A. No. I was unable to locate any of them in Bakersfield.

(Testimony of Chester C. Crisman.)

Q. Did you locate any of them anywhere else?

A. I personally [764] did not, no. I obtained some information where some of them could be located and forwarded that information to the proper field division covering those areas, and I understand that some of them have been interviewed as a result of that information, but I personally did not.

Q. The only person you checked on was Mr. Bender, is that correct?

A. I talked with Mr. Bush.

Q. What was the object of going to see Mr. Bender? Was it merely to find out the names of persons who had worked on the rig?

A. I talked to Mr. Bush——

Q. No. I did not say Bush. What was the object of talking to Mr. Bender, merely to find out the names of workers on the well?

A. That was my purpose in seeing Mr. Bender, yes.

Q. Did you interrogate Mr. Bender in respect to his idea as to the unloading of this machinery on Mr. Faria?

A. Mr. Bender volunteered that information to me.

Q. Did you send it over there to your captain, as it were?

A. Yes.

Q. What did you say when Mr. Bender made those remarks?

A. I don't recall. If you mean did I express any opinion or anything of that sort——

Q. Yes.

A. I did not.

(Testimony of Chester C. Crisman.)

Q. Do you know whether or not in the course of preparing the defense to this action you and your assistants were asked to check with every person that had had anything to do with the drilling of this well?

A. Do I know of my own personal knowledge whether or not we were asked?

Q. Yes.

A. Of my own personal knowledge I do not know, no.

Q. You were not there for any other purpose, were you? A. At Mr. Bender's office?

Q. Yes. A. No.

Q. You did not see Mr. Bush for any other purpose, did you? A. No.

Mr. Scampini: That is all.

Mr. Bourquin: That is all. Call Mr. Marshall.

THURMAN MARSHALL

called as a witness on behalf of plaintiff; sworn.

Q. (By the Clerk): State your name to the court and jury. A. Thurman Marshall.

Direct Examination

By Mr. Bourquin:

Q. Where do you live?

A. Calistoga, California.

Q. What is your present business or occupation?

A. Operating engineer.

(Testimony of Thurman Marshall.)

Q. Employed by whom?

A. Humbert Brothers.

Q. Have you ever been engaged in the business of oil or gas [766] well drilling?

A. Yes, both.

Q. Were you employed at the Cal Bay well when the exploration of it was made there in 1944?

A. Yes, sir.

Q. Had you had any earlier experience in oil or gas well drilling than that? A. Yes, sir.

Q. What was it? How much?

A. Well, I worked about a year and a half, I would say, around Bakersfield, Riverdale, Colusa, and Rio Vista.

Q. All prior to your going to work over at Cal Bay? A. That is right.

Q. About when was it in 1944 that you went to work there, Mr. Marshall?

A. It was either October or November. I don't remember the exact date.

Q. Can you trace *it reference* to the superintendent or head driller that you worked under there?

A. The head driller at the time I went to work I believe was Pete Anderson, as I knew him.

Q. Did he continue there all the time that you worked there? A. No, sir.

Q. Who succeeded him as your superior?

A. I don't know what his name was. I forgot his name. I can't recall his name.

Q. Who was your last superior in that work over there? A. L. R. Parks.

(Testimony of Thurman Marshall.)

Q. During the period of October and November, Mr. Marshall, what shift were you working?

A. We rotated shifts. [767]

Q. Were they working three shifts?

A. That is right.

Q. Was the job being pushed? A. No.

Q. What did you note as to the progress or push of the job over there during the period that you worked there?

A. State the question again, please?

Q. What did you observe as to the progress or the push for progress of the work while you were there?

A. Well, there wasn't anyone in a hurry.

Q. Nobody in any hurry. What did you observe during the drilling there in October and November, 1944, with respect to the operation, itself?

A. I don't get the meaning of that question.

Q. Let me ask you this: Were you working there at the time this so-termed blow-up occurred?

A. Yes, sir.

Q. What shift were you working at that time?

A. Daylights from 8 to 4.

Q. Were you present when the blow-out occurred? A. Yes, sir.

Q. What duties were you performing on that shift at that time?

A. I was a rotary helper. At the moment of that time we were mixing mud.

Q. At the moment of that time you were mixing mud? A. That is right.

(Testimony of Thurman Marshall.)

Q. Were you in proximity to the well in that duty? A. Yes, sir.

Q. You were right there? A. Yes, sir.

Q. Will you just tell us what happened on that occasion, when it happened, what happened, and what you saw?

A. Well, just [768] like any other well, it creates pressure. What it was, nobody knows until there is tests made of it. And it just blew out a bunch of old black oil. We had spotted oil in there prior to that to loosen the drill pipe. The drill pipe had been stuck on account of heaving shale, and blew out a bunch of that old black oil we had pumped in there, and then there was a small amount, a small quantity of green oil.

Q. What proportions did the blow-out assume, the size and the time? Can you tell us that?

A. Well, as far as time, it would mean anywhere from, well, you can't judge hardly the time of them—anywhere from three minutes, maybe four minutes, whatever time it takes to close out the blow-out equipment.

Q. It blew, though, for three or four minutes?

A. Yes, sir.

Q. How did it blow? In one spurt, or successive spurts? A. Successive.

Q. Describe it to us. What did it blow to or on?

A. Well, it just blew up on the Kelly out of the hole, just spurted up, kind of like a geyser, or whatever you want to call that.

(Testimony of Thurman Marshall.)

Q. How high did it blow?

A. I would say at the highest point maybe fifteen feet.

Q. And it came in successive spurts for a period of about three or four minutes? A. Yes, sir.

Q. Was it then that the well was closed down?

A. Pumped mud in the hole to relieve the pressure.

Q. What did the hole give up when it blew out? You stated [769] it gave up black oil and some little green oil, and what else?

A. Mud, sand, gravel.

Q. Was there any sand there that you could identify or determine the character of?

A. No, sir. A little heaving shale came out with it.

Q. Why do you say you could not identify the character of the sand?

A. There wasn't enough quantity of it to analyze.

Q. Had you observed any gas showing there in the course of drilling?

A. A small portion, yes.

Q. At the time of the blow-out did gas make itself evident? A. A mighty small quantity.

Q. After the blow-out was subdued, after the three minutes, did you continue to get any evidence of gas?

A. Not enough that you can tell it, no.

Q. Will you tell us whether or not the well gave up any water at that time, or before?

A. Well, evidently, yes.

(Testimony of Thurman Marshall.)

Q. What evidence was there in that respect?

A. Well, the mud was thinning all the time.

Q. The mud was thinning all the time?

A. That shows water, shows salt water.

Q. What did you observe or what was done by the drilling crews when you were present to meet the situation of mud thinning all the time?

A. Added aquagel in order to bring the viscosity back. Put Baroid in the mud, mixed it up, in order to bring the weight up. [770]

Q. Did you use much of that?

A. Quite a bit, yes.

Q. Did that continue, this thinning of the mud, with the water and the addition of those materials right up to the time of the blow-out?

A. Yes, sir.

Q. By the way, you spoke of the sticking of the drill pipe. In the handling of the matter there did you and the others know where the drill pipe stuck?

A. Well, I guess we knew as close as anyone. We could take the measurement of the drill pipe, measure what we had out of the hole at the time, and figure your length, the depth of your hole, and subtract the length of what was out from the depth of the hole, and tell at what depth the pipe was stuck.

Q. What conclusion did you and the others there arrive at in this respect?

A. Heaving shale.

(Testimony of Thurman Marshall.)

Q. What conclusion did you reach as to where the pipe was stuck?

A. Well, they have regular figures for it. I don't know just the regular footings. It was around 4700 feet.

Q. Were you there in the process of the cutting of the window and putting in of the whipstock?

A. No, sir.

Q. You were not. You were aware they were drilling through whipstock, did you?

A. I knew they were, yes.

Q. What relation did you find the whipstock had to the place where the pipe was stuck?

A. Well, it was just about the same depth.

Q. It was stuck about the depth of the whipstock. If you [771] remember, how long before this blow-out occurred was it that the pipe was stuck? Was it a few hours, or a few days? Had you in your experience worked around explorations that had experienced blow-outs before?

A. Yes, sir.

Q. Did you, from your experience, reach any conclusion as to the possibilities from this fact that the blow-out occurred?

Mr. Scampini: We object to the question. The proper foundation has not been laid. This person has not qualified himself as an expert.

The Court: I think that objection is good.

Mr. Bourquin: You may cross-examine.

(Testimony of Thurman Marshall.)

Cross-Examination

By Mr. Scampini:

Q. Mr. Marshall, were you interviewed prior to coming to testify at this trial by an agent of the Federal Bureau of Investigation?

A. Yes, sir.

Q. Do you know the name of the person who interviewed you?

A. No, sir.

Q. Did he show you his badge?

A. Yes, sir.

Q. Did he ask you questions?

A. Yes, sir.

Q. What did he say to you?

A. He asked me my name, introduced himself and asked me if I worked on this well, and he asked me if I knew where any of the men was at the time that had worked on the well.

Q. Anything else?

A. That is practically all.

Q. Did he ask you what you had observed in the course of your [772] activities on the well?

A. No, sir.

Q. Did he ask you whether you had ever been convicted of any trouble before?

A. No, sir.

Q. When you went to work for the Cal Bay Corporation what was the scope of your duties?

A. I was a roughneck.

Q. A roughneck works where in relation to the rotary table?

A. Well, they are all called roughnecks. I was a helper.

(Testimony of Thurman Marshall.)

Q. How long had you been working in oil fields before?

A. I believe I answered that question a while ago. Around a year and a half.

Q. And you had always been a helper, had you not?

A. No, sir.

Q. What were you before?

A. I had worked on a derrick, and I had worked on a cathead.

Q. The cathead is up above in the derrick?

A. No, sir.

Q. Where is the cathead?

A. The cathead is on the opposite side from the driller.

Q. I stand corrected. What were you drilling in connection with the activities of the drilling going on on the Cal Bay? Did you keep the log?

A. No, sir.

Q. Did you do anything with building up the mud?

A. Yes, sir.

Q. Do you know what weight mud was being used at or about November 25, 1944?

A. Well, the mud ran anywhere from 105 to 110-pound mud.

Q. Is that heavy mud, in your experience?

A. Extra heavy.

Q. Is extra heavy mud necessary to control high pressures at [773] the bottom of the well?

A. Yes, sir.

(Testimony of Thurman Marshall.)

Q. Had you observed any oil or gas showings in the ditch during all this period of time that you were working prior to November 25th?

A. A small amount, yes.

Q. Had you observed any incident where the ditch was ignited with a match? A. No, sir.

Q. Did you observe any instance where some of the sand had been taken from the ditch and then ignited? A. No, sir.

Q. Did you know Dick Stevenson at the time you were working there on November 29th?

A. I knew him as a man coming backwards and forwards to work, and that is all.

Q. Did you see him there immediately after the blowout on November 29th? A. No, sir.

Q. Did you see a man go into the ditch and throw a lighted newspaper on the ditch and the entire ditch ignited? A. No, sir.

Q. Were you there at or about two o'clock in the afternoon of that day? A. Yes, sir.

Q. What were you doing?

A. I was helping, whatever the driller told me to.

Q. What were you doing when the well first blew in? A. Mixing mud.

Q. How far is the mud mixer or mud ditch from the rotary table on the derrick?

A. I would say 20 or 25 feet.

Q. Could you see from the mud ditch what was coming out of the hole of the well?

A. Yes, sir. [774]

(Testimony of Thurman Marshall.)

Q. Did you see any gas coming out of the hole of the well?

A. Not enough to tell it, no, sir.

Q. Not enough what?

A. Not enough that you could tell it, no.

Q. But you could see some oil?

A. Yes, sir.

Q. You said you could see some green oil?

A. A small quantity, yes.

Q. Where did you notice it?

A. On the rotary table.

Q. Was pressure applied immediately to the pumps for the purpose of closing the gas control heads as soon as the blow-out occurred?

A. Yes, sir.

Q. How much pressure was applied for the purpose of closing the gas control head?

A. I don't know.

Q. Do you know how much pressure was indicated on the meters or registers on the derrick at the time of the blowout?

A. You mean pump pressure?

Q. Yes. A. I do not, no.

Q. Now, you say you worked on wells that blew out? A. Yes, sir.

Q. Where did you work on a well that blew out?

A. Capital No. 1 at Colusa, California.

Q. For whom?

A. Capital Oil Company.

Q. When?

(Testimony of Thurman Marshall.)

A. Well, we drilled two wells up there. One was in the first part of May, either 1943 or '44—I don't recall the date—and working for O'Kane & Brane.

Q. The well was being drilled by the Capital Company, you say? [775]

A. They was paying for it. O'Kane & Brane was drilling it.

Q. Is Capital Company a subsidiary of Trans-america Corporation and Bank of America?

A. I do not know.

Q. How long did it take to close the gas control head on the Maria well when the well blew out?

A. To completely close it, we did not.

Q. Do you know any reason why you were not able to completely close it?

A. Sand and heaving shale on the inside of the rubbers in there, that they would not close tight enough to hold the pressure, to keep it from flowing out.

Q. Were you able to look into the gas control head and in there see heaving sand between the rubber and the drill pipe?

A. After it stops blowing out.

Q. Where were you standing in order to be able to look into the gas control head?

A. On top of the rotary table.

Q. And you would be able to see in between the rubber and the drill pipe?

A. Yes, sir.

Q. How much pressure had been applied to these rubber holdings in order to compress them against the drill pipe?

A. I don't know.

(Testimony of Thurman Marshall.)

Q. Would you say it was less than 1500 pounds?

A. On the rubbers?

Q. On the rubbers.

A. To press them around the drill pipe?

Q. Yes. A. I wouldn't say.

Q. But you are positive that you were able to see between the [776] rubbers and the drill pipe?

A. Surely, you can see through them when they are cut through.

Q. When they are cut through?

A. Yes, sir.

Q. Were they cut through?

A. I have seen them cut through, yes.

Q. But were these rubbers cut through on this occasion? A. That I do not know.

Q. Have you ever been convicted of a felony?

A. No, sir.

Q. How often did you see this well surging after the first initial blow-out during the period of, say, the next two hours?

A. How often was it surging?

Q. Yes.

A. I wouldn't say. No definite time on that.

Q. Have you any idea of how many times it tried to break loose?

A. It would surge. You could tell that from the blow pipe on the mud.

Q. How long did it keep that up?

A. No definite time on that. I won't quote.

Q. Was it still going on when you left the shift?

A. No.

(Testimony of Thurman Marshall.)

Q. When had it stopped?

A. I don't know when it stopped.

Q. Did it stop when the mud had been built up to a weight of 116 pounds per cubic foot?

A. I didn't see 116 pound mud on the well.

Q. Did you see 110?

A. I saw 109, 110, and 112-pound mud weight.

Q. Did you see Mr. Mohr working at the well building up the [777] mud? A. Mr. Mohr?

Q. Yes, of the Baroid people.

A. Yes, sir.

Q. Was he making tests in your presence as to the weight of the mud?

A. He was weighing the mud and taking the viscosity of the mud.

Q. Did you make any tests as to the weight of the mud or the viscosity of it?

A. I have weighed the mud, yes, sir.

Q. You have mixed it, haven't you?

A. Yes, sir.

Q. But you have never weighed it?

A. I have weighed it.

Q. What was the highest weight you have observed? A. 112 pounds.

Q. How many times did the F.B.I. man come to see you? A. One time.

Q. Were you asked or ordered to come down here to testify? A. Yes, sir.

Mr. Scampini: No further questions.

(Testimony of Thurman Marshall.)

Redirect Examination

By Mr. Bourquin:

Q. Mr. Marshall, what happened to that well, the Capital Company's, where you saw the blow-out? What happened to that?

Mr. Scampini: That is incompetent, irrelevant, and immaterial, if it please the court, and on redirect examination not proper. Furthermore, this witness is not a qualified man to testify as to what happened to any well except where he worked as a helper.

The Court: He is qualified to testify to what he saw. You [778] asked him if he ever saw the same thing happening at another well. He said yes, he did.

Mr. Scampini: Seeing a well blow out does not necessarily mean he knows what happened to the well thereafter. There may be many reasons why the well is not in production. There may be a collapsed casing, as here.

The Court: That may be true. We may be getting into collateral fields there, counsel.

Mr. Bourquin: That is all. Thank you, Mr. Marshall.

The Court: We will take the noon recess at this time, ladies and gentlemen, and resume at two o'clock. Please bear in mind the admonition of the court.

(A recess was thereupon taken until two o'clock p.m. [779])

Afternoon Session, February 4, 1947

2:00 P.M.

The Clerk: United States vs. Central Land in Contra Costa County.

Mr. Bourquin: Mr. Marshall was on the stand.

The Court: Had you concluded, Counsel?

Mr. Scampini: I will excuse any further examination.

FRANK MORRIS

called as a witness on behalf of plaintiff; sworn.

The Clerk: Will you state your name to the court and jury?

A. Frank Morris.

Direct Examination

By Mr. Bourquin:

Q. Mr. Morris, you live where?

A. Sutter Creek.

Q. Sutter Creek, California. What occupation are you engaged in? A. Mining.

Q. Mining. Did you work for Cal-Bay Company in the exploration that was done on the property here under discussion?

A. Yes. I went to work for Joe in the last part of October, some time.

Q. Of what year? A. 1944.

Q. How long did you work there, Mr. Morris?

A. Oh, a couple of months.

Q. A couple of months?

A. Until they moved out.

(Testimony of Frank Morris.)

Q. Until they moved out. Had you any earlier oil and [780] gas drilling experience?

A. Quite a bit.

Q. Will you tell us briefly what experience you had before?

A. I had about five years of it.

Q. About five years in California?

A. Yes.

Q. For what concerns?

A. Well, all up and down the coast, all over the rig.

Q. All over the rig? A. Yes.

Q. You mean all places on the rig?

A. Yes, all but driller.

Q. What companies had you worked for before?

A. Well, I worked for several different companies, Standard, in drilling explorations, Brown, Rocky Mountains, and for others, little small rigs.

Q. Were you working at the well November 29 when the blow-out occurred there? A. Yes.

Q. What shift were you working on there?

A. Daylight.

Q. Daylight shift? A. Yes.

Q. Were you there when the well blow-out occurred? A. Yes.

Q. What others were present, if you can tell us when that blow-out occurred?

A. Just the crew.

Q. Just the crew? A. Yes.

Q. By the way, who was the superintendent of the well at that time?

(Testimony of Frank Morris.)

A. Well, there wasn't any; you don't call the superintendent. You call them pusher, May.

Q. Was Mr. May there when the blow-out occurred? A. No.

Q. He was not there? A. No. [781]

Q. Did you see him there subsequently?

A. Yes, he come shortly after the well was shut and killed.

Q. He came shortly after the well was shut and killed. A. Yes.

Q. Did you discuss with him and he with you, in the matter of what had occurred?

A. He wanted to know what happened. I told him, and he went back to hunt Joe.

Q. You said the crew was there. That was yourself and who else?

A. Lead tong boy, pipe roller, the driller, the derrick man, and myself.

Q. How about the man that fired the boilers?

A. He was down over the hill.

Q. Do you know where he was when the blow-out occurred?

A. He was down around the pots where he belonged.

Q. Did he come up to the well during the time the blow-out took place?

A. No, he wasn't up there when the blow-out was going on.

Q. Tell us what this blow-out would consist of and how long it existed.

(Testimony of Frank Morris.)

A. Well, it was just like any gas well coming in, it will pop and bubble and it belched quite a bit, and you throw a little mud in there.

Q. How long did that go on before the well was——

A. I would say about ten minutes.

Q. Did you see what came up in the blow-out?

A. Mud.

Q. Mud? A. Mud and a little shale.

Q. Mud and a little shale. See any sand?

A. Well, that is [782] hard to find in mud, rotary mud.

Q. Did you identify any?

A. No; I didn't look.

Q. Was there some oil?

A. Well, there was a little oil. Before that we had been circulating oil and that might have been in the hole with it.

Q. Were you able to identify what the character of the oil was that showed up in the well?

A. No; just black oil.

Q. Old black oil? A. Yes.

Q. You had spotted oil there before, had you?

A. Yes.

Q. Black oil? A. Yes, a couple of times.

Q. A couple of times? A. Yes.

Q. Mr. Morris, what do you mean by the term "clabber?"

A. Well, when the mud, the gas meets the rotary mud it will make it thick, it won't run.

(Testimony of Frank Morris.)

Q. Does it present an occurrence like we know of clabber in clabber milk?

A. Yes, just like something in it, it won't run down the mud ditch, you have to shove it.

Q. Prior to the time of the blow-out had you observed, had the mud clabbered in that well?

A. Well, it had belched several times while I was there. I was not there when the well first started. I was there later on. It belched a few times and showed signs of gas. One Sunday they had some visitors there and one of the visitors, he dropped a match on the mud ditch and it burned.

Q. When was that?

A. I don't know. I can't remember the date. [783] That was a Sunday, and a bunch of visitors were there.

Q. You say prior to the blow-out the well had belched several times?

A. Oh, yes, and belching, you can't get right up to it, that is a big body of gas, and nobody knows that clabbering, mud—slat water mixed in with your gas, that will clabber, too.

Mr. Scampini: I move to strike out the statement of the witness on the ground he is not qualified to pass upon such matters.

The Court: The statement of opinion of the witness may go out.

Q. (By Mr. Bourquin): Had you seen wells blow out before? A. Yes.

Q. Had you seen any in Northern California?

(Testimony of Frank Morris.)

A. I seen one gas well over in Rio Vista and I saw one up around Colusa, there; his was gas and sulphur water, mixed.

Q. Do you own any stock in this Cal-Bay, or did you buy any? A. No.

Mr. Bourquin: I think that is all.

Cross-Examination

By Mr. Scampini:

Q. Mr. Morris, were you interviewed by an agent of the Federal Bureau of Investigation?

A. One came to my house, yes.

Q. When did he come to your house?

A. About, oh, two or three weeks ago, I guess.

Q. Did he show his badge to you?

A. Yes.

Q. Did he tell you what he wanted to see you about?

A. Yes. He wanted to know if I had worked for the Cal-Bay Corporation. I had forgotten the name. I know the well I worked for up there. I told him yes.

Q. Did you recall the incidents that took place during the period of time you were working for Cal-Bay when he spoke to you?

A. Yes. When he mentioned about this well blowing out, yes.

Q. That brought it to your memory, is that correct? A. Yes.

Q. Are you sure that Mr. May was not there on the derrick? A. Yes.

Q. At what hour of the morning did the well begin to blow out?

(Testimony of Frank Morris.)

A. I couldn't tell you the exact time. It was about the middle of the day.

Q. Where was Mr. May at or about eleven o'clock of that day? A. I do not know.

Q. When did you first see Mr. May at or near the derrick? A. The time?

Q. Yes.

A. I don't know what time it was.

Q. What were your duties or activities on that day? A. I was cathead boy there.

Q. Where is the cathead in relation to the drill pipe or rotary table?

A. It is over by the rotary chain, opposite from the driller.

Q. What were you doing, helper?

A. No. I was running the [785] cathead.

Q. You were running the cathead. Who was doing the drilling?

A. That young fellow, Parks.

Q. Mr. Parks. Who was working there in the crew besides?

A. Well, there was a derrickman, I forget his name, another short fellow, and Marshall and myself, and another slim kid who lived in Antioch, there, a big tall boy.

Q. Mr. McBride? A. Yes.

Q. You recall him? A. Yes.

Q. What did you first observe when the well began to blow out?

A. You mean the way it acted?

(Testimony of Frank Morris.)

Q. Yes.

A. Well, it was bubbling, and then it begin to crack and pop.

Q. How loud a pop?

A. Pretty good crank.

Q. Like a roar?

A. Yes, it rumbled a little bit.

Q. How high up into the air did it——

A. Did it blow?

Q. Did it blow?

A. Well, it went, I would say, to the finger.

Q. How high up is that?

A. About half way.

Q. About half way up the derrick?

A. Yes.

Q. The derrick is a 122-foot derrick?

A. I don't know the length of it.

Q. Did it not appear to you to be a 122-foot derrick?

A. I never give it a thought. I never thought how high the derrick is.

Q. What weight of mud was being used at the time, just prior to—— [786]

A. At the time the well came in?

Q. Yes. A. 108, 109 pounds.

Q. Had the well been in course of circulation for the previous two days?

A. Yes, it was circulating.

Q. The pipe was stuck, was it, a couple of days?

A. We started out of the hole and stuck the pipe, yes.

Q. The oil that you spotted into the well, as you

(Testimony of Frank Morris.)

boys call it, had been spotted two days before the blow-out, had it not? A. A few days, yes.

Q. All this while the well had been circulating mud through the drill pipe and up the sides of the casing, back to the surface?

A. Yes, goes down and comes out.

Q. In your opinion, and based on your experience, would not the oil which had been spotted into the well two days before have been circulated out prior to eleven o'clock on November 29th?

A. Yes, the biggest part of it would have been. Of course, there would be a little bit left in the crevices.

Q. Did you see any green oil come out of the well during the blow-out? A. No.

Q. Did you hear Marshall to the effect that some green oil came out of the well? Do you disagree with him?

A. Well, I didn't pay no attention. I never seen no green oil.

Q. Did you pay any attention to what was coming out of the nozzle of the well?

A. "Nozzle?" What do you mean by "nozzle?"

Q. Well, out of the Kelly.

A. Well, there was nothing coming out of the Kelly.

Q. Where was the gas——

A. Coming out around the pipe.

Q. From down below?

A. Yes, coming out the casing.

(Testimony of Frank Morris.)

Q. Isn't the gas control head down below the derrick floor? A. Down the gate, yes.

Q. Did you go down there and take a look at the gas control head? A. No.

Q. Do you know what pressure they used for the purpose of closing the gas control head?

A. You mean the water pumps?

Q. Yes.

A. The last time I looked at it it was 750 pounds and they pumped more.

Q. Do you know about how high it was?

A. No.

Q. Who was taking care of the pumps or the pumping? A. You mean the mud pumps?

Q. Yes. A. The derrick man.

Q. Where were you? A. On the floor.

Q. What did you do for the purpose of bringing the well under control?

A. The derrickman went out—I closed the blow-out vent.

Q. How much pressure did they use to do that?

A. I pumped up 750 pounds and he pumped afterward. I could not tell you the exact pressure.

Q. Did you see Mr. Mohr, of the Baroid Sales Division, appear [788] on the scene?

A. He came just before we——

Q. What did he do for the purpose of bringing the well under control?

A. Well, I can't say he done anything, or I didn't see him do anything.

(Testimony of Frank Morris.)

Q. Who built up the weight of the mud?

A. The derrickman and the roughneck.

Q. Do you know to what weight they built it?

A. 116 pounds.

Mr. Scampini: That is all.

Redirect Examination

By Mr. Bourquin:

Q. Mr. Morris, at the time the mud belched and blew out, did you see any gas come out?

A. You can't see gas.

Q. During the time that you were there at the well had you seen any gas, any free gas come out?

A. No. That gas is not liquid around there, it is just like butane.

Q. You mean that gas is a dry gas?

A. Dry gas, you can't see it. They use it, put it right into the motor or stove and burn it.

Q. You saw no gas coming from the well at the time the mud blew out?

A. No, but you could smell plenty of it.

Mr. Bourquin: That is all.

Mr. Scampini: No further questions. [789]

CAPTAIN E. E. SAUNDERS

called as a witness on behalf of plaintiff; sworn.

The Clerk: Will you state your name?

A. Captain E. E. Saunders.

(Testimony of Captain E. E. Saunders.)

Direct Examination

By Mr. Bourquin:

Q. Captain, are you an officer of the United States Navy? A. Yes, sir.

Q. You have been with the Navy how long, Captain?

A. I reported back for active duty in December, 1940.

Q. Have you been on active duty ever since?

A. Yes.

Q. Captain, did you have anything to do with the establishment of the Government Arsenal in the hills behind Port Chicago?

A. Yes, I did.

Q. Will you just state briefly the assignment you had in that regard?

A. Well, I am a member of the Civil Engineering Corps whose responsibility is to design and construct naval shore establishments and facilities, and in that capacity I started the development of the project which is comprised of awarding contracts for engineers, architects, to prepare plans and specifications prior to the award of contracts for construction.

Q. You had charge of that ground work, did you? A. Yes.

Q. Where were you stationed at that time?

A. In the office of the Officer in Charge of Construction at Mare Island.

(Testimony of Captain E. E. Saunders.)

Q. Did you in that connection have to do with establishing the [790] survey for the project?

A. Yes. We awarded the contract, first by a *typographical* map and a perimeter description of that property which was needed for the establishment of a magazine. [790-a]

I reported in at Mare Island on the twelfth of May and Admiral Hussey, the chief of the Bureau of Ordnance, had looked the property over and had approved it as the location for the magazine on the day previous. I was placed in charge of the development to get it under way.

Q. Did you make the arrangements for the surveys to be made? A. Yes, sir.

Q. Did you arrange with the property owners for the surveys to be made?

A. Yes, in order to expedite the construction it was necessary for us to go into the property with the surveying crews to establish contours and grades. Prior to the approval of the project by the Secretary of the Navy and the release of funds for its construction, if any damage were done by the surveying crews to the property while going through their work, prior to the release of funds for the construction of the project, we would have no money to pay them their damages. Consequently, it was necessary to secure the permission of the owners for the surveyors to enter the property, since we could not proceed in any other way.

Mr. Scampini: I move to strike out the last portion of the witness' statement on the ground it is the conclusion of the witness.

(Testimony of Captain E. E. Saunders.)

The Court: It may go out.

Mr. Scampini: And self-serving. [791]

Q. (By Mr. Bourquin): Captain, did you obtain the permission of the property owners for the Navy surveyors to go in there and make the necessary surveys? A. Yes, sir.

Q. Can you tell us when that permission was obtained relative to the property owners of the property in question, namely, the properties of Mary Faria, Edward Faria, Mae E. Roche, Joseph Chevez, and Geraldine Faria?

A. We received that permission some time between the 20th of May and the 26th of May, 1944, at least, for a portion of those tracts. I can't identify them without a little research over the data which I have here.

Q. Have you data with you from which you can tell us you received that permission to enter and make the survey on the Mary Faria tract?

A. I think that was Tract 59.

Q. Tract 59 is right, Captain.

A. We maintain for ready reference——

The Court: Captain, just say if you can tell the time. That is all the attorney wants.

Q. When was that done?

A. As I said before, some time between the 20th of May, when the letter went out to the owners asking this permission, and the 26th of May, at which time we notified our surveyor that he was free to enter certain tracts, among them being 57, 58 and 59.

(Testimony of Captain E. E. Saunders.)

Q. 57, 58 and 59? A. Yes, sir.

Q. That would be the tracts as we know them here, of Edward [792] Faria, Mae Roche and Mary Faria? A. I believe that is correct.

Q. You say you had sought and obtained that permission before May 28, 1944? A. May 26.

Q. May 26, 1944? A. Yes, sir.

Q. You have a record of that?

A. Yes, sir.

Q. Captain, do you know Mr. Joseph Faria, who is here in court?

A. I have met him, yes, sir.

Q. You have talked with Mr. Joseph Faria or he with you, relative to the Navy's intended acquisition of that property. Can you answer that yes or no, if you will? A. Yes, I have.

Q. Can you tell us when, Captain, it was that you talked to Mr. Joseph Faria and he with you relative to that subject?

A. Not the exact date.

Q. How near would you be able to fix the time, or can you fix the time with reference to any event that you talked with Mr. Joseph Faria and he with you relative to the Navy's acquisition?

A. I know it was prior to the approval of the project by the Secretary. It is my impression it was before I was relieved of certain portions of my duties in that project. My best impression is it was in the middle of June.

Mr. Bourquin: You may cross-examine.

(Testimony of Captain E. E. Saunders.)

Cross-Examination

By Mr. Scampini:

Q. Captain, did you cause to be obtained [793] the consents of the property owners to this survey personally?

A. It was done by correspondence.

Q. Did you see the letters go out?

A. I wrote the letter.

Q. To whom did you write the letters in respect to Mary Faria's property or Edward Faria or Mae E. Dutra?

A. To them as the record owners in the property.

Q. Did you keep copies of the letters that you sent?

Mr. Bourquin: We have them.

Mr. Scampini: May I see them, please?

Mr. Bourquin: There is Mary Faria, Edward Faria, and Mae Roche (handing documents to Mr. Scampini).

Mr. Scampini: I now offer in evidence, if it please the Court, a letter dated May 20, 1944, from the Commandant's Office, Navy Yard, Mare Island, California, addressed to Mae E. Roche, Concord, California, reading as follows:

“Dear Madam:

“The Government wishes to obtain certain information which will be facilitated by having a survey party enter upon your property in the Clayton Valley east of Concord, California.

(Testimony of Captain E. E. Saunders.)

It is requested that you give us your permission for this period to make the desired survey by signing in the place indicated and returning the attached copy of this letter in the envelope furnished. Your prompt cooperation in granting this permission will be of [794] material assistance in forwarding an important war project.

“By direction of the Commandant,

“Very truly yours,

B. C. Bedell, Captain,

U. S. Navy Public Works
Officer.”

And underneath that appears the following:

“Permission granted May, 1944,” no signature.

The other two letters are exactly identical in form, and one is addressed to Mary Faria, Route 2, Box 120, Concord, California; and the other one is to Edward Faria, Clayton Road, Concord, California. Neither one of the copies delivered to me bears any date as to the permission granted or any signature. I will ask that they be marked as our exhibit next in order.

Mr. Bourquin: No objection.

(The documents in question were thereupon received in evidence and marked Defendants' Exhibit 34.)

[Defendants' Exhibit 3 4 appears on pages 1263-1264.]

(Testimony of Captain E. E. Saunders.)

Q. (By Mr. Scampini): Captain, did you receive the approval of any of these three property owners in writing to the making of this survey?

A. They each returned their form letter with their approval.

Q. Have you got it with you? A. No.

Q. Where is the returned copy signed by Mary Faria?

A. There was no value to those after the declaration of [795] taking had been made; consequently they have been destroyed.

Q. All three of those letters have been destroyed as far as the copy signed by the parties is concerned? A. I am afraid that is true.

Q. Are you certain in your own mind that you received back from these property owners that I have named their signed approval to the survey?

A. Positive.

Q. How many parcels of land were involved in this project? A. Two hundred or so.

Q. Did you receive consents from all of them?

A. Yes.

Q. To the making of the survey?

A. Yes.

Q. Without exception?

A. No, not without exception.

Q. Who did accept, if you recall?

A. There were one or two parcels where the crops were in such condition that if the surveyors entered it would ruin the crops and they withheld their permission.

(Testimony of Captain E. E. Saunders.)

Q. Did anyone call you up to find out what this survey was intended for, what is the object of the survey?

A. We had numerous calls from interested parties. Whether any of these particular people called, I could not tell you.

Q. When they did call, did you give them any information as to what were the purposes of the survey?

A. We referred them to the District Legal Office.

Q. As far as you know, of your own personal knowledge, no information was given to any of these inquirers, is that [796] correct?

A. I think the answer is "Yes" to that.

Q. In your discussion with Mr. Joseph Faria in the middle of June, 1944, did you tell Mr. Faria what the Navy intended to do?

A. I doubt if we gave him details. We would not have done that to anyone.

Mr. Scampini: That is all. No further questions.

Redirect Examination

By Mr. Bourquin:

Q. Captain, did you make a record or cause a record to be made in your office of the receipts of the permission to enter and make the surveys on these tracts we are talking about?

A. Yes, sir.

(Testimony of Captain E. E. Saunders.)

Q. Have you that record with you?

A. Yes, sir.

Q. Will you tell us just what the record consists of?

Mr. Scampini: I would like to see the record, Counsel.

Q. (By Mr. Bourquin): May I see it and show it to Counsel first, Captain?

The Court: What did you do, Captain, note on this map when you got the permission from a particular owner?

The Witness: Yes, sir.

The Court: How did you note it on the map?

The Witness: Colored the tract in red so that the blocks could be readily available where work could be continued.

The Court: So any block that is colored red on that map is the property of a person from whom you obtained consent [797] to make the survey?

The Witness: That is right.

Q. (By Mr. Bourquin): We will offer the diagram, your Honor.

Mr. Scampini: We object to it on the ground it is incompetent, irrelevant and immaterial.

The Court: Is it necessary?

Mr. Bourquin: I will withdraw the offer.

Mr. Scampini: No information was given to any of these property owners as to the purpose of the survey.

The Court: Naturally it was not. The Navy was not telling people what kind of projects it was building.

(Testimony of Captain E. E. Saunders.)

Mr. Scampini: There was no information given to any of the property owners that they intended to take of the property. Permission to survey does not constitute knowledge of an intended condemnation, your Honor.

The Court: I am not intending to rule on that.

Mr. Scampini: Pardon me.

Mr. Bourquin: I think that is for the Jury to determine.

The Court: It is some notice, I suppose. During the war people knew when the Army or Navy came in to look over your property there might be some question with respect to its being taken.

Q. (By Mr. Bourquin): Captain, in that connection, in connection with the receipt of permission from these people we talked about, Mary Faria, Edward Faria and Mae Roche, did you make or cause to be made in your office any further records on the map of that fact, that that permission had been received?

A. The surveying contractor was looking to us for instructions, and as fast as these permissions were received by us we would write him—we did it each day—a daily letter, according to my recollection, telling him what permissions had been received, and on which tracts it was permissible for him to proceed with this work, and those letters were written to him for his instruction. This is one here which pertains to Tracts. 57, 58 and 59.

Q. That is what?

A. A letter signed by myself addressed to

(Testimony of Captain E. E. Saunders.)

Punnett-Parez & Hutchison, the civil engineers who were making the survey.

Q. Advising them of the permission obtained from Mary Faria, Edward Faria and Mae Roche to enter the tract and make the survey?

A. Yes.

Q. What is the date of that letter, Captain?

A. The 26th of May, 1944.

Q. May 26, 1944.

Mr. Scampini: May I see the letter, Captain, please?

The Witness: Surely.

Recross Examination

By Mr. Scampini:

Q. Will you please indicate to me, Captain, wherein there appears on this letter any reference to a permission having been obtained from Mary Faria, Mae Dutra or [799] Edward Faria in respect to their respective parcels?

A. It is by the parcel number.

Q. Wherein does it indicate that any permission had been received from said parties referring to Parcels 59, 58 and 57?

A. I do not think I understand your question.

Q. Will you please examine the letter and state or point out to me where on the letter there appears any reference as to permission having been received from Mary Faria, Edward Faria or Mae Dutra, in respect to their respective parcels?

A. This letter states that the names and addresses furnished by Mr. Punnett and Mr. Mutchi-

(Testimony of Captain E. E. Saunders.)

son obtained from the county records, and which were used to send out the letters—may I read the paragraph?

Q. Yes, please read the paragraph that you say constitutes a statement of the fact that you received permission?

A. "The Officer in Charge of Construction has requested of the owners of property in the proposed inland site, using a list of names and addresses furnished by your office, and to date has received replies which have granted permission to enter parcels——" a long number—and then ending up with 57, 58 and 59, which were the highest-numbered parcels.

Q. That is the statement upon which you base your conclusion or opinion to the effect that you did receive consent from those parties, is that right?

A. That is right. [800]

Q. As far as you know, the only permission you received, a returned copy of the letter signed by the parties, no longer exists, is that right?

A. That is right.

Mr. Scampini: No further questions.

Mr. Bourquin: That is all, Captain. Thank you.

The Captain is out here from the east. May he be excused, your Honor?

Mr. Scampini: Yes.

The Court: You may be excused.

Mr. Bourquin: We would like to call Mr. Joseph Faria as a witness under Section 2055.

JOSEPH FARIA, JR.,

recalled as a witness by the plaintiff; and having been previously duly sworn, testified as follows:

The Clerk: You have already been sworn, Mr. Faria. Will you please state your name for the record?

The Witness: Joseph Faria.

Direct Examination

By Mr. Bourquin:

Q. Mr. Faria, you testified that you were not present at the well when the oil was spotted that was put down the well on November 27, is that right?

A. I testified that I was there when they spotted oil there.

Q. You testified that you were there?

A. Yes, the one day that they spotted oil. As to the date, I don't remember [801] which one it was, but I know I was there.

Q. On both occasions?

A. No, I remember one. I don't know about the other, but I do remember one occasion.

Q. How many barrels of oil do you recall they spotted on the occasion that you were there?

A. That was eight barrels of oil.

Q. Mr. Faria, I show you here a photostat of a document bearing the heading of the Haliburton Oil Well Cementing Company and ask you if that is your signature at the bottom of that?

A. Yes.

(Testimony of Joseph Faria, Jr.)

Q. You signed it. Is it a report of the spotting by the Haliburton Oil Well Cementing Company of a certain quantity of oil in that well on November 27, 1944? Is that correct?

A. It says, "Spotting oil."

Q. November 27, 1944? A. Yes.

Q. How many barrels does it show?

A. It looks like 18 there.

Q. It looks very much like it?

A. It does look like an 18. I don't know whether it is or not. It looks like it.

Q. A one and an eight?

A. It does look like it.

Q. It is signed by you under the clause, "The above job was done under the supervision of the owner, operator or agent, whose signature appears below," and the signature is Joseph Faria, Jr., Agent of the Contractor or Operator, District—I guess that is Bakersfield City—is that what that is?

A. I imagine that is what it is.

Mr. Bourquin: We will offer it as an exhibit in evidence and ask that it be marked as a Government's exhibit.

Mr. Scampini: No objection.

(The document in question was thereupon received in evidence and marked U. S. Exhibit U.)

[Plaintiff's Exhibit U appears on page 1283.]

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Bourquin): Mr. Faria, did you cause a notice of intention to deepen the Cal Bay Corporation well on the property to be filed with the Division of Oil and Gas in 1944? A. Yes.

Q. I will show you here, Mr. Faria, the copy of the Notice of Intention to Deepen, purporting to be filed with the Division of Oil and Gas, signed by Cal Bay Corporation, by Byron Norris, Engineer, and ask you if you can identify that as the notice that was filed?

A. Yes, that refers to the well.

Q. That is the Notice of Intention that was filed, notifying the Division of Oil and Gas of the intention to deepen the Faria well in 1944, is it?

A. Yes, I believe it is.

Mr. Bourquin: We will offer it in evidence, if your Honor please, as the Government's exhibit next in order, and if I may, I would like to read the substance of it—not all of the form, but the matter contained. It is addressed to the Division of Oil and Gas, on the letterhead of "Concord, California, July 20, 1944," and it states that, "In compliance [803] with the laws," specifying the law of California, "notice is given of our intention to commence the work of deepening the well No. Faria No. 1," in the section, township, range and description in Contra Costa County.

It recites, "The present condition of the well is as follows: Total depth, 4,398 feet. Casing 121½

(Testimony of Joseph Faria, Jr.)

inch cement 618 feet. 7 inch 23# cement 4,343 feet with 150 sacks of cement.

“A record of performance shot at levels 3,768-3,768, 4,250-4,269, 4,481-4,289, 4,270-4,279. Ran 21½ inch tubing of the packer above 4,260 feet slobbering hole dry. No water and a little gas.”

And the proposed work is as follows:

“Clean out hole, drill and core ahead to try to locate a gas band. Your division will be notified in the event a commercial gas band is uncovered.

“Signed: Cay Bay Corporation,

“By Byron C. Norris, Engineer.”

(The document in question was thereupon received in evidence and marked U. S. Exhibit V.)

[Plaintiff's Exhibit V appears on page 1284.]

Q. (By Mr. Bourquin): Mr. Faria, in connection with a subject that we asked you about at the outset of this trial, I have examined the audit which Mr. Scampini was good enough to allow us to examine, my associate has, and we have ascertained from the audit that the total commissions paid out on the sale of [804] stock were \$47,573.60. Can we agree upon that, Counsel?

Mr. Scampini: Correct.

Mr. Bourquin: And of that sum of money there

(Testimony of Joseph Faria, Jr.)

was paid out to Joseph Faria for commissions the sum of \$42,484.60. Can we agree upon that, Counsel?

Mr. Scampini: We will stipulate to that, Counsel.

Mr. Bourquin: You stipulate to that. Just one other matter, then. The audit likewise shows that there was charged by and paid to Joseph Faria, as we have agreed before, I believe, in 1943, the sum of eight thousand and some odd dollars rental on equipment. That would be agreed, Counsel?

Mr. Scampini: Yes, so stipulated.

Q. (By Mr. Bourquin): You testified, Mr. Faria, that the corporation was indebted to you in a further sum of \$32,445 for moneys advanced, is that correct?

A. No, it is more than that. I did not hand in all of my receipts. It is considerably more than that.

Q. You left me under the impression that you advanced money to this corporation——

A. I did.

Q. ——like an officer. That was not the fact, was it? The actual fact was that the \$32,000 that you referred to represents the charges set up on the books of the corporation made by you for the rent of the equipment in the year 1944, does it not?

A. 1944 and 1943. [805]

Q. In other words, the total rental charged by you approximated \$40,000 and they paid you \$8,000 on it, is that true?

A. That is about it, I think.

(Testimony of Joseph Faria, Jr.)

Q. And the \$32,000, which you say you advanced the company, represents what you say you advanced in the shape of the use of equipment which has not yet been paid for, is that true?

A. Some of it.

Q. In that connection you still have a claim of \$32,000 against any assets of this company for rental of equipment, is that true?

Mr. Scampini: If it please the Court, the testimony is to the effect that the amount owing to Mr. Faria is not \$32,000 and some odd, as Counsel has indicated, but \$34,784.14. That was his answer.

The Court: What Counsel is trying to get at is whether or not the witness still has a claim against the corporation for \$34,000.

Mr. Scampini: We will stipulate to that.

Mr. Bourquin: That is it, your Honor.

The Court: Is that correct?

The Witness: Yes.

Mr. Bourquin: I would like to read from this audit what these items are made up of. There aren't so many.

Mr. Scampini: We object to it as incompetent, irrelevant and immaterial, unless we are allowed thereafter to go into [806] the reasonable cost of such items on rebuttal. We will stipulate to the aggregate amount, but if he is going to read the items, I will have to ask permission to show that it is the reasonable cost in that industry.

Mr. Bourquin: I am not putting them in for the purpose of testing the amounts, your Honor; I

(Testimony of Joseph Faria, Jr.)

want them in, first, so that it is clearly understood this gentleman has a claim against the company and, secondly, it is not for moneys advanced by him to be employed, but represents unpail rentals on the Joseph Faria equipment that he put on the property and which was utilized in the drilling of the well.

The Court: But he has already agreed that that is the fact.

Mr. Scampini: We stipulate to all of that.

The Court: That is correct, isn't it?

The Witness: That is——

Mr. Bourquin: That is all of the witness.

Mr. Scampini: May I see that exhibit which was just offered?

Cross-Examination

By Mr. Scampini:

Q. Mr. Faria, referring to Plaintiff's Exhibit U, which is the Haliburton Oil Well Cementing Company photostat, will you take a look at the "1" appearing in front of "8", and state whether or not it appears to be scratched out? [807]

Mr. Bourquin: Just a minute, your Honor. I think the exhibit itself is the best evidence. The Jury might examine it.

The Court: Yes, I think that objection is good. That is a matter for visual observation by anyone.

Mr. Scampini: Very well, your Honor. I will ask permission to show the exhibit to the Jury, your Honor.

The Court: All right.

(Testimony of Joseph Faria, Jr.)

Q. (By Mr. Scampini): Mr. Faria, do you know of your own knowledge how many barrels of oil were spotted in the well on the date to which this photostat refers?

A. Eight barrels, I was told.

Q. Do you know of your own personal knowledge?

A. No, I do not of my own knowledge. That is what I was told.

Q. With reference to the exhibit which has just been offered with regard to the notice to the Division of Oil and Gas, which is now U. S. Exhibit V, I note here a statement to the effect that, "Your Division will be notified in the event a commercial gas sand is uncovered." Did you thereafter notify the Division of the discovery of a commercial gas sand?

Mr. Bourquin: I object to that as calling for a self-serving declaration, your Honor.

Mr. Scampini: Counsel has brought it in on his own examination. I am entitled to show what was furnished to the Division pursuant to the [807] notice.

The Court: It is a self-serving declaration. Your opponent can offer that kind of document, but I do not think you can. It would be self-serving. I think the objection is good, Counsel.

Mr. Scampini: May the record show, your Honor, that I desire to offer——

The Court: You can offer whatever document you want, for identification.

(Testimony of Joseph Faria, Jr.)

(Testimony of Joseph Faria, Jr.)

Mr. Scampini: I will ask, then, that the report of the Faria Well No. 1, under the heading, "Division of Oil and Gas," the quintuplicate copy, be marked as our Exhibit next in order for the purpose of identification.

(The document in question was thereupon marked Defendants' Exhibit No. 35 for Identification.)

Mr. Scampini: No further questions.

The Court: Anything else of this witness?

Mr. Bourquin: No, your Honor.

The Court: That is all.

As soon as the Jury gets through looking at this exhibit we will take the recess, unless you have a witness who will be short.

Mr. Bourquin: No, the next witness will not be that short, your Honor.

The Court: We will take the afternoon recess. Please bear in mind the admonition of the Court, ladies and gentlemen of the Jury.

(Recess.) [809]

NICHOLAS TALIAFERRO

called as a witness on behalf of plaintiff; sworn.

The Clerk: Will you state your name to the court and Jury?

A. Nicholas Taliaferro.

Direct Examination

By Mr. Bourquin:

Q. Doctor, what is your business or profession?

A. I am a geologist, primarily, but I am also professor of geology at the University of California, at Berkeley.

Q. How long have you followed geology, Doctor?

A. About 32 years or more, not counting my education in it.

Q. 32 years or more, not counting your education in it?

A. My beginning education as a professor.

Q. You say that you are presently professor of geology at the University of California, at Berkeley?

A. Yes.

Q. How long have you been with the University?

A. The last time 21 years.

Q. The last time? A. Yes.

Q. In what capacity have you served the University there?

A. As professor of geology and for nine years as chairman of the Department of Geology.

Q. You were chairman of the Department of Geology at the University? A. Yes.

Q. What years, doctor?

A. 1935 to 1945—1936, rather, to 1945.

(Testimony of Nicholas Taliaferro.)

Q. 1936 to 1945. Since that time your activity has been over [810] there as professor?

A. Yes.

Q. Just outline to us, Doctor, what your education and experience in geology have been.

A. Well, I received my bachelor's degree in geology in mining in 1913, and my doctor's degree in geology in 1920.

Q. Where?

A. At the University of California. In 1914, '15 and '16 I was geologist for the Standard Oil of New York in China and the Philippines. Following that time I was a graduate student at the university, and during the First World War I conducted an examination of all of the chrome and manganese mines in the Sierra Nevada and many of those in the Coast Range, for the Government.

In 1918 and 1919 I started to do consulting work in oil and continued that together with my other duties to the present time. After receiving my doctor's degree, I was in consulting work for many companies, working in California and Alaska, Montana, Wyoming, Mexico and other parts of the United States, principally in California.

For two years I was chief geologist to the chief of the Land Department of the Ventura Oil Company, 1923 to 1925. That was taken over by the Texas Company. I returned to the university. I have been there ever since.

(Testimony of Nicholas Taliaferro.)

I have done, while at the university, consulting work for a good many of the companies, Standard of California, the C.C.M.O., which is the Santa Fe, also innumerable companies. [811]

Q. Doctor, in your experience have you made personally field investigations and studies of the geologic formations of California?

A. My specialty is the geology of California. I am writing a book on the geology of California, and I have mapped personally in detail 3300 square miles of the Coast Range, and 500 square miles of the Sierra Nevadas. I mapped that personally in 22 years.

Q. Doctor, in that map work that you have done, have you made any maps, have you made your maps and your records from early published maps, or have you made them altogether from your own examination and field investigations?

A. From my own examinations.

Q. Doctor, in this matter before the court, did you make an investigation and analysis of the geology with respect to the possibility of oil and gas in the vicinity, including the area of the Cal Bay well?

A. Yes, sir. I was requested by the Navy to make such an examination in about May of 1945, and I made such an examination, spending some time in the field and rendering them a report of July, 1945.

Q. And in that examination did you map the area?

A. Yes, I mapped the area.

(Testimony of Nicholas Taliaferro.)

Q. In that connection did you map that area from published studies that were then on the market or in the books, or did you do your mapping substantially from your investigations and experience in the field?

A. Altogether of my own knowledge of [812] what was there in the field. I might say among the courses I give at the university is a course in the geology of California. I would say I create the literature; I don't need to turn to it.

Q. In this case, did you make a map of the, let us say, the formations or structures from a geologic standpoint in the area of Cal Bay well?

A. I did.

Q. Have you that map with you? Doctor?

A. I have. This map was made on airplane picture furnished by the Navy on a scale of 1 to 20,000, or approximately 1667 feet to the map. That is the practice used in mapping nowadays.

Q. That was the basis——

A. That was the basis.

Q. You used in presenting your data?

Mr. Scampini: May I take a look at it, your Honor? Go ahead, Counsel.

Q. (By Mr. Bourquin): Does this map present your observations and the results of your investigations of the geology of this well area?

A.. Yes.

Mr. Bourquin: We will offer it as our exhibit in evidence, your Honor.

(The map was marked Plaintiff's Exhibit W in evidence.)

(Testimony of Nicholas Taliaferro.)

Mr. Bourquin: I would like to put it on a new board, if we can, because I might want to refer the doctor to one or more of the maps that have been put in evidence.

(The map was placed on the blackboard.) [S13]

Q. (By Mr. Bourquin): Doctor, would it be the better way to present the data for you to step to the map?

A. Well, I think I can do that rather rapidly. This is the usual geologic map made in the general fashion, and it shows the distribution of the various ages and units that occur in the region. The upper unit is the upper miocene, which consists of sandstone and volcanic ash, in this general line (indicating). The next unit is the Markley formation or upper eocene age lying in below the miocene. Then you have the Domengine sand, which is predominantly white sand. Below that is the Martinez and Meganos, and below that the cretaceous.

I might say this area down here, here and over this way, this map has a direct bearing on this area. There is a major thrust fault runs along the front of the hills (indicating). They dip to the northeast. As stated, in this region the eocene over the miocene. That breaks up here and enters into the eocene and continues on and finally dies out (indicating). That is as all faults do. The whole region is full of many cross faults in this block. Moving from the east, there is probably a considerable amount of disturbance in the over-riding blocks and it breaks and is

(Testimony of Nicholas Taliaferro.)

faulted. It was the normal course of events. You will see it breaks, and many faults (indicating).

Q. What are the fault lines shown as on the map? A. They are shown in red. [814]

Q. Point to one so we will see.

A. There are a series of faults. Here you will see them. Here they are cut in various directions. These that I have shown you have definite evidence of. The general dip—this, of course, lies on the north flank, the northeast flank of the great Mt. Diablo, which lies down in this region. The essential dips there from this point are the other way, from the mountains, toward the valley. There was renewed growth of the mountain (indicating). The mass of the mountain is here.

Q. Now, Doctor, while you are there, did you find any evidence of an anticline on the Faria Cal Bay property favorable to the accumulation of a commercial deposit of oil or gas?

A. I did not.

Q. In that connection, were you here when Mr. Norris, the petroleum engineer, testified?

A. Yes.

Q. And Mr. de l' Eau when he testified?

A. Yes.

Q. Now, one of the gentlemen, I believe it was Mr. Norris, produced one of the earlier maps.

A. Yes.

Q. He identified matter from his map as a dip or dips in the southwest quarter of the southeast section of Township 21. I would like to point that out.

(Testimony of Nicholas Taliaferro.)

This is the Contra Costa County map, and this is where he identified the dip. Have you examined this map of the defendants heretofore, Doctor?

A. Briefly.

Q. This is a State map. In your examination there on the [815] property did you see any evidence of a dip to the southwest, as the witness Norris says and marks on the southwest quarter of the southeast section of township 21.

A. No. I found all the dips in that region to be to the northeast. There is a dip down in the next section, here, that generally dips to the southwest, but that lies in the fault zone. The rest of the dips are all toward the northeast.

Q. Well, you say you find one dip common to the southwest beyond the fault zone. A. Yes.

Q. Beyond this—— A. In the fault zone.

Q. In the fault zone. The major dips run northwest to southeast, is that true? A. Yes.

Q. Doctor, did you find in your examination an anticline such as, the evidence of an anticline on Cal Bay Faria property such as is shown on the official map of Contra Costa County by the witness Mr. Norris? A. No.

Q. Did you find evidence of such an anticline as was shown by the map of Mr. de l' Eau on this property?

A. That I would have to examine as I looked at that map—I might say there is a very weak anticline to the northeast of the well, but so weak you can hardly see it. It is merely a flattening of the beds.

(Testimony of Nicholas Taliaferro.)

Q. Can you point out the approximate line on your map? A. Right here.

Q. In relation to that what is the approximate length of that [816] anticline?

A. About 2500 feet; I would say approximately a little less than half a mile to the northeast. That is so weak that it is really—it drops back from the well and flattens and then goes down in the general dip off toward the Valley Range.

Q. Is the structure of Cal Bay Property, or the Faria property, a gently folded structure, or is it a faulted structure?

A. It is strongly faulted. The bed dips from the fault very steeply at first, then gradually gently out to the usual dip out toward the valley, toward the northeast, but it is in the immediate vicinity of the fault that the dip is rather high.

Q. Would you consider the Cal Bay Corporation a favorable structure in which to explore for a commercial accumulation of oil or gas?

A. Emphatically not. Had I been sent out to report on such an area, either a new area or a submission, I would never have recommended the drilling of a well in that location. In fact, I would have turned down the thing and so reported.

Q. You heard the witnesses, the various witnesses on geology and engineering testify here for the defendants? A. Yes.

Q. Since the outset of the trial?

A. Since the beginning.

(Testimony of Nicholas Taliaferro.)

Q. Have you seen the log of this well?

A. Yes.

Q. And the studies that were made of it in 1943 in the Schlumberger test and the other tests, the results there shown.

A. Yes.

Q. Do you find in any of it any reason to believe that on the [817] Cal Bay or Faria property that they could find any commercial deposit of oil or gas?

A. I do not.

Q. Now, Doctor, you have heard here the references to seeps and oil showings in the water holes on the property, and so forth; are you familiar with that?

A. I saw no oil seep on the property. There is a gas seepage and I think they tried to take a picture, but I don't believe they had any success. However, I think there was a gas seep there.

Q. What is the significance of the gas seep there in the property? Have you got your investigation report?

A. I have made seepage examinations in northern California, the first time was in 1919, when I was with the Union Oil Company of Delaware, now the Shell Company. I made a report on oil possibilities, not on gas, on oil possibilities north of San Francisco Bay, and at that time I examined all of the known seepages and all of the wells that had been drilled in the northern California region, and I found many gas seepages. I have since then examined them in detail, two quadrangles, two areas, 250-mile areas, up in that region, and have

(Testimony of Nicholas Taliaferro.)

had occasion to see a great many seeps of oil and gas. In fact, I made a report for one of the northern California oil companies on the whole region, and found many seeps, gas seeps escaping in that region. In fact once they pulled up a fence post and lit the hole.

Q. Lit the hole from an old fence post?

A. From an old fence [818] post. Gas in the cretaceous of northern California is exceedingly common. There are innumerable gas and oil seepages. I remember making the rash statement in 1919, being young and rash, that I would drink all the commercial oil produced up there, and if we say "commercial" I think I would still repeat that. The wells do not yield in barrels per day, but in gallons per month, which you could hardly consider commercial.

Mr. Bourquin: You may cross-examine.

Cross-Examination

By Mr. Scampini:

Q. Professor, how many days did you spend on the subject property making your personal investigation?

A. I spent on this particular examination fifteen days. However, I have mapped, if I may explain to you, all of this region previously. I had mapped this area down in here previously. As I had not been across that area (indicating), I spent fifteen days in the central part of that area.

Q. When you say that you mapped it previously, I will ask you whether or not you did not write

(Testimony of Nicholas Taliaferro.)

an article in 1940 for Bulletin 118 of the Division of Oil and Gas, entitled, "Central Coast Range"?

A. Yes, I did.

Q. I will ask if in respect to that article did you use a map entitled, "Geologic Structure and Cross Section Central Coast Range of California," which I show you.

A. I did.

Q. At the top of the map you will please state what cross [819] section appears at the very beginning of that map?

A. 10. This is No. 10. It is the map that extends from the Pacific Ocean underneath San Francisco Bay, which I left blank, across to the San Joaquin River, through the location of Mt. Diablo. Do you wish me——

Q. I shall ask the questions, Professor, if I may.

A. I say, "Modified after J. A. Taft" on that end of the area.

Q. Well, I was coming to that. On the cross section of this Mt. Diablo region where did you get your information in the map that appears in that bulletin?

A. As I stated on the map, I took it from Taft. That was written in 1939.

Q. You had reason to believe at that time that the cross sections of that map by Professor Taft are correct, did you not?

A. No, no. I modified it some.

Q. In your modification will you now please state wherein it differed from the cross section of the geological formations found on Mr. de l'Eau's map,

(Testimony of Nicholas Taliaferro.)

which is Defendants' Exhibit 32 in evidence, and entitled "Cross Section E-F."

A. My section runs across Mt. Diablo farther south of the area shown.

Q. Will you now please state whether or not the geological formation shown as existing in Cross section E-F prepared by Mr. de l'Eau on Defendants' exhibit 32 is substantially correct as you found it on your investigation on the subject property?

A. No. [820]

Q. What is wrong with the cross section on his map of the area? Do you note that end——

A. This—I don't know where it was taken. You said "through the subject property."

Q. Well, that is a cross section.

A. E-F?

Q. E-F shows——

A. It is a very generalized cross section and was taken bodily on that point from the article of J. A. Taft. [820-a]

Q. Do you note any errors on that cross-section?

A. Yes, I do, if it is through the property.

Q. Well, it is apparently through the property indicated by the line E-F on the map.

A. Yes.

Q. Please now refer to the section of the property traversed by the cross-section and state whether or not you find any errors on there?

A. Yes, I do.

Q. What errors do you find?

A. I find the thrust fault that is shown here is not shown there.

(Testimony of Nicholas Taliaferro.)

Q. Where is any thrust fault shown on the cross-section E-F? A. There isn't any.

Q. Please state where the thrust fault that you say exists on your map would appear on the cross-section E-F?

A. The details of the cross-section out here are not there. It would appear somewhere in here (indicating). This section does not go through the defendants' property obviously, because there is no Martinez exposed. I do not know what this is—I suppose that is Tejon. There is no Tejon exposed there.

Q. Professor, let us take a look at the longitudinal section G-H, along the axis of the anticline which Mr. de l' Eau states exists on the subject property, as shown by my marker, and I will ask you to state whether or not the formations shown on that cross-section appeared on the subject property and were traversed in the course of drilling the Cal Bay well? [821]

A. Well, I would say essentially they were, yes. We do not call that Tejon, but still I would say, however, the cross-section at this end is entirely erroneous.

Q. What is erroneous at this end of the cross-section, pointing at the easterly end?

A. That section, I take it, is right through here, is it not?

Q. That is correct.

A. That brings out beds down as low as the Martinez, we will say. It had been very low.

(Testimony of Nicholas Taliaferro.)

Q. Let us take a look and limit our investigation to the cross-section between the faults which are on both sides of the Cal-Bay Faria well. Please state whether or not those formations are substantially correct and found by you to exist on that cross-section.

A. Well, I do not know as they are as to depth. I do not see a scale here. I could not say they were substantially correct. The same formations are found, yes. I think there has been no question as to that.

Q. Did you locate on the subject property the following formations, to-wit, any pliocene?

A. Are you speaking now of the area of the property?

Q. Where the Cal-Bay Corporation well exists, at the surface of the structure?

A. At the Cal-Bay well there is certainly no pliocene, no.

Q. Did you find any miocene?

A. Not at the Cal-Bay well, no.

Q. Did you find any miocene to the north of the Cal-Bay well? [822]

A. Yes, I pointed that out on the map.

Q. Did you find any oligocene?

A. Oh, no, there isn't any oligocene in there.

Q. Did you find any markley formation?

A. Yes.

Q. Underneath the marino did you find any of the Tejon group?

(Testimony of Nicholas Taliaferro.)

A. It depends on what is meant by the Tejon.

Q. Did you find a Martinez?

A. Not on the surface, no.

Q. Did you find it in the course of drilling the Faria well? A. Yes, it was in the well.

Q. At approximately what depth did the Martinez show up?

A. I would have to refer to some notes I think I have. The top of the Meganos was at about 4,184.

Q. Is the Meganos above or below the Martinez?

A. Well, it is above it.

Q. Where would you locate the Martinez formation on the Cal-Bay property, assuming that you located the Meganos at about 4,184?

A. If it is there, about fifty feet below.

Q. And how thick is the Meganos formation in that region?

A. The Meganos formation in this region is exceedingly thin.

Q. How thick is the Martinez formation in that region?

A. If it is there at all, it is very thin.

Q. What makes you state that it is very thin?

A. From my map—this will be rather technical, but you brought it up—from my map in this region, down in here, I found a factor that is well known to all the oil geologists who have worked [823] in this region—and I have done my share in working it out—that between what is known as the Domengine sand and the Meganos formation there was a break; that the Martinez and the Meganos

(Testimony of Nicholas Taliaferro.)

were slightly tilted before the Domengine was laid down. The Domengine was sand, clay and carbonaceous shale, and when the Domengine sea again came in these were beveled off and they thinned progressively toward the north. In the Standard Kellar they were 577 feet thick. In the Cal-Bay well they were about 153 feet thick, in that neighborhood; then progressive thinning of everything between the base of the Domengine and the top of the cretaceous occurs in the line of this direction (indication on map). There is a progressive overlap of the Domengine onto the cretaceous, cutting out the Meganos and the Martinez for a distance in the flank of the Diablo uplift. Down here—I forget the figures on the thickness—but the Meganos and the Martinez go up to twelve or fifteen hundred feet.

Q. Are you finished? A. Yes, sir.

Q. Would you say the Domengine formation was penetrated by the Faria well in the course of drilling? A. Unquestionably.

Q. Would you say that the Martinez formation was penetrated by the Faria well in the course of drilling? If the Martinez is still there I certainly think it was penetrated, yes.

Q. Is the Domengine formation productive of oil and natural [824] gas in commercial quantities in any of the surrounding gas fields?

A. The Domengine?

Q. Yes. A. Oh, yes.

Q. Where?

A. The eocene sand, either Capay or Domen-

(Testimony of Nicholas Taliaferro.)

gine produced—well, at Honker Bay this sand that comes in just below—these are, I think, quibbles in geology—they come in below what is called the true Domengine, the Capay sand, and then in the other fields of the eocene, of this region, you produce from either the Domengine sand or from a sand in what is known as the Capay right below it.

Q. Is the Domengine sand productive in commercial quantities of natural gas in the Rio Vista field? A. As I remember it, yes.

Q. Is it productive in commercial quantities in the Honker Bay well?

A. No, I do not think it is. I think the production there, from all that I have heard, came from a sand just below what they call the Domengine.

Q. Is it the Martinez?

A. No, it is the Capay.

Q. It is an in-between sand, is that correct?

A. It is an in-between sand, yes.

Q. Between the Martinez and the Domengine?

A. Yes.

Q. Is the McDonald Island gas field from the Martinez sand?

A. Supposedly from the McDonald Island sand, which is supposed to be Martinez.

Q. How thick are the Martinez sands in the McDonald Island [825] field?

A. I do not carry those figures in my head. I have too much else. I do not bother with them.

Q. Would you say they were fifteen hundred feet thick?

A. I wouldn't say a word about them.

(Testimony of Nicholas Taliaferro.)

Q. What underlies, generally speaking, the Martinez? A. The cretaceous.

Q. Is the Marino a portion of the Cretaceous?

A. Yes, it is the upper portion.

Q. Is the Marino a shale or a sand?

A. A shale with sand in it.

Q. Is a shale generally considered to be a source rock for oil or natural gas if it is a marine shale?

A. No, not always.

Q. Is it sometimes? A. Oh, yes.

Q. Is the Marino formation productive of natural gas in commercial quantities in any other gas fields surrounding this territory?

A. Surrounding this territory?

Q. Yes. Say Tracy?

A. No, no, that is not surrounding this territory.

Q. How far is Tracy from the Cal-Bay property?

A. It is 60 miles from my house, and I live about ten miles from the well; I guess about seventy miles.

Q. And how many gas fields in California produce from the upper Cretaceous formation, to your knowledge?

A. You are say now not Marino, but upper Cretaceous? [826]

Q. Upper Cretaceous?

A. The buttes, the Marysville buttes, are producing a small amount of gas from the upper Cretaceous. Tracy is still producing a small amount of gas from the upper Cretaceous. Vernalis is said,

(Testimony of Nicholas Taliaferro.)

doubtfully said, to produce from the upper Cretaceous, but I am not so certain about that. There are small fields scattered around northern California, none of them produce very much.

Q. Will you say the upper Cretaceous underlies the Martinez on the Cal-Bay property where the Faria well was drilled?

A. Most certainly. I would say it was penetrated.

Q. What basis have you for your statement that it was penetrated?

A. The presence of the foraminifera of the known Cretaceous age, the *globo truncana*.

Q. Did you examine any of the cores of the Faria well? A. I am not a micro-paleontologist.

Q. Where did you get the information that there were present fossils in cores of the formations taken from the Cal-Bay that indicated it to be of Cretaceous formation?

A. I got it from the log furnished me by the Navy, who obtained it from the Standard Oil Company and from other sources.

Q. Now, when you are talking about the log, which log are you referring to? The log of the Standard Oil Company Kellar No. 1?

A. No, I am referring to the Cal-Bay log.

Q. Do you mean to state from your examination of the log of the Cal-Bay you determined that the well had penetrated the [827] Cretaceous?

A. Yes, I would say without much doubt that it had penetrated the Cretaceous because—I expected

(Testimony of Nicholas Taliaferro.)

the Martinez and the Meganos to be very thin in that area, and the Domengine shows up in all well logs. You can see in the Schlumberger log it shows up. You know where it is. And using that interval I would have expected the well to go into Cretaceous at a relatively shallow depth.

Q. At what depth do you think the Cal-Bay well penetrated the Cretaceous?

A. I could not say to the foot, because they did not core in that well continuously as one normally does in a wildcat well, but from the best information that I can get I would say that they penetrated the top of the Cretaceous at about forty-three—somewhere between forty-three thirty-seven and forty-three seventy-two, somewhere in that region.

Q. Would that be the formation where the first showing of gas was obtained in October, 1943, according to your view?

A. What depth is that showing obtained?

Q. You say you examined the log of the well. Don't you know?

A. I do not carry those figures in my head.

Q. Have you any record or any information upon which you predicated your statement that the Cretaceous was penetrated at 4,300 feet?

A. Yes.

Q. What record have you got?

A. Not that I made personally; that was from information that I believed worthy. I [S28] am willing to accept information that I believe worthy.

(Testimony of Nicholas Taliaferro.)

Q. Where did you obtain the information that you believed worthy?

A. From the Standard Oil Company.

Q. What information was supplied to you with respect to the Cal-Bay well by the Standard Oil Company?

A. None directly. They supplied it to the Navy and the Navy gave me copies of what they supplied and said they would give me anything I wished. However, I formed my own judgments, did my own field work, drew my conclusions and gave my report and the incident was closed.

Q. Did you draw your conclusions that the Faria well penetrated the Cretaceous at 4,300 feet because the Kellar well drilled by the Standard Oil Company had penetrated the Cretaceous at about that depth?

A. They did not penetrate it at that depth, I do not think.

Q. Where did the Kellar well penetrate the Cretaceous?

A. The Kellar well penetrated the Cretaceous at 3,760 feet.

Q. Did you draw a conclusion from the fact that the Kellar Well penetrated the Cretaceous at 3,760 feet that the Cal-Bay well penetrated the Cretaceous at 4,300 feet?

A. No, that would be a false assumption.

Q. That is correct. Isn't it a fact that in the Kellar well they penetrated the same formation three times?

A. Yes. I have drawn a cross-section showing that.

(Testimony of Nicholas Taliaferro.)

Q. To what do you attribute the penetration of consecutive [829] formations or, rather, the same formation three consecutive times?

A. This thrust fault dips in beneath the Kellar structure, which I described before I thought, and with movement like this, went along a bedding plane, slipped up and buckled over. If you try to push anything like that (indicating), it will buckle over. It overrode this three times. I have it on my cross-section, penetrating three times.

Q. Is it true, Professor, the reason the same formation was penetrated three times is because of the existence of the fault which is shown on Mr. de l' Eau's map and entitled Bailey Pass Fault referred to as that fault on your map which you have just indicated?

A. Well, I would not say that that was the same fault. It is this fault that I show on my map.

Q. Where does the fault that shows on your map appear on the map of Mr. de l' Eau——

A. I don't know.

Q. ——or is there any difference?

A. I think there is.

Q. Does the fault shown on your map go through the Bailey Pass?

A. Here is the Bailey Road.

Q. Where does the fault go through?

A. It goes through a little bit north, I would say 500 feet northeast of the Montebello-Diablo Rancho line.

(Testimony of Nicholas Taliaferro.)

Q. With relation to the Bailey Pass Road, where does that fault lie? A. I have just said.

Q. Is it in close proximity?

A. I don't know where the [830] Bailey Pass—I will have to look at this.

Q. Didn't you go over the Bailey Pass Road in your field investigation, Professor?

A. Oh, yes.

Q. Didn't you see the dip standing practically upright in the Bailey Pass Road?

A. That is the Willow Pass.

Q. That is the Willow Pass that you are pointing to now, and that is to the southeast plunge of the structure, isn't it? Referring you to the Bailey Pass——

A. Here is the Bailey Pass Road here. Here is where the fault goes right there (indicating).

Q. Then would you say the fault placed on the map by Mr. de l' Eau is approximately correct, at Bailey Pass?

A. Down to that point. From then on we do not agree.

Q. With respect to the Willow Pass Road which is shown on Mr. de l' Eau's map, would you say that it is approximately correctly placed?

A. Approximately. You can't miss it.

Q. With respect to the section lying in between the Willow Pass fault and the Bailey Pass fault, can you state whether or not that is not or is a closed structure by reason of the faults on each plunge?

A. Are you speaking of this as the Bailey Pass fault (indicating).

(Testimony of Nicholas Taliaferro.)

Q. That is what it says there, doesn't it, Bailey Pass fault, Bailey Road fault?

A. We were speaking of entirely different faults—entirely different faults.

Q. To what fault are you referring?

A. There is no such [831] fault across the Bailey Pass Road.

Q. Professor, how do you account in your studies of geology that the Cretaceous was encountered in the Kellar well three times at about thirty-seven hundred feet, whereas in the Cal-Bay well it is only penetrated once in normal sequence, if there is any fault between them?

A. There was what?

Q. I will withdraw the question and approach it from a different angle.

A. I think I can answer the question if you substitute Domengine for Cretaceous.

Q. Perhaps I did not understand your answer. Didn't the Standard Oil well penetrate a formation three consecutive times?

A. It penetrated the Domengine.

Q. It was the Domengine? A. Yes.

Q. Did you find any evidence of any missing formations in the Cal-Bay log that normally follow each other in sequence on the geological table?

A. No, you went into the Nortonville shale, which is clearly shown; you went out of the Nortonville shale into the Domengine; and you went out of the Domengine into a thin section that is probably Meganos or Martinez or both, and you went

(Testimony of Nicholas Taliaferro.)

out of that into the Cretaceous in a normal section.

Q. That would indicate to you there is no faulting?

A. Oh, no, I have shown a fault in my cross-sections through the Cal-Bay well, and I think there is such a fault there.

Q. Please indicate what evidence you found on the property [832] which indicates the existence of a fault through the Cal-Bay well?

A. Here is the Cal-Bay well (indicating). The beds in the vicinity are dipping very steeply back. Here you have within less than a foot—as close as you get to it on the fault right here—the Markley formation of the eocene age is standing at 60 degrees, dipping to the northeast in contact with the pliocene.

Q. Professor, aren't you referring to the same fault that Mr. de l' Eau has marked to the southwest of the very structure as existing there?

A. You referred to this as the Bailey Creek fault and then to this as Bailey Creek fault (indicating).

Q. No, that is the Willow Pass fault that you are now indicating.

A. Yes, the Willow Pass fault.

Q. Is that the fault that you say runs across the Cal-Bay well?

A. I say it does, yes.

Q. Isn't it a fact that the Cal-Bay well runs at least six hundred feet to the northwest from the fault line?

A. Nine hundred feet.

Q. At least nine hundred feet?

A. I measured it. Nine hundred feet.

(Testimony of Nicholas Taliaferro.)

Q. Isn't it customary in the oil and gas prospecting business to try and locate a well as close as possible to a fault and yet not within the influence of the fault, if you reach the conclusion that the fault may form the closure to the trap? [833]

A. In the first place, you would have to state a lot of reasons why you concluded the fault would form a trap.

Q. Is it possible for a fault to form a trap?

A. It is possible.

Q. Is it possible for the Bailey Pass fault on the one side and the Willow Pass fault on the opposite side to constitute seals, as it were, to a structure lying in between them?

A. I deny the existence of the Bailey Pass fault, so I cannot answer the question.

Q. Do you deny the existence of the Kirker Pass fault which lies to the north of the Bailey Pass fault?

A. Where is the Kirker Pass fault?

Q. Where is the Kirker Pass fault?

A. I can't refer to that map. I have to refer to my own. I did not make that map.

Q. What name have you given to the fault you have located?

A. This is the Willow Pass fault.

Q. That is right, and that shows up over there, too?

A. Yes, but it does not go in the same place. I did not name these, because there are so many of them. I would run out of names. Here is Bailey Pass and here is Kirker Pass.

(Testimony of Nicholas Taliaferro.)

Q. Would you say there is no fault——

A. There is a fault at Kirker Pass, right there (indicating).

Q. And there is a fault, then, between the Kirker Pass and the Cal-Bay property, according to your map?

A. There is a [834] fault right here, yes.

Q. Where is that fault located in relation to the Bailey Pass Road?

A. Here is the Bailey Pass Road, right here (indicating).

Q. How many feet away or how many miles away from the fault indicated by you as lying in the proximity of the Bailey Pass Road?

A. It is not in proximity. It is about half-way between the Bailey Pass Road and the Arnold Industrial Highway, which is the Willow Pass Road.

Q. Half-way. How many miles between the fault that you have just indicated and the Willow Pass Road?

A. About a mile and a half.

Q. Now, referring to Mr. de l' Eau's map, isn't it approximately about a mile and a half between the Willow Pass fault, as shown by him on that map, and the Bailey Pass fault?

A. About two miles.

Q. Please state whether or not in your experience you have not found numerous incidents when faults have acted as seals and formed traps for the accumulation of oil or gas?

A. No, not numerous ones, no.

Q. Some? A. Some.

(Testimony of Nicholas Taliaferro.)

Q. It is not impossible, is it?

A. No, it is not impossible.

Q. Do you concede, Professor, the existence of dips on the Cal-Bay property dipping to the north-west from the summit?

A. I have shown many of them, yes. [835]

Q. Do you concede the existence of dips in a reverse direction from the summit of the Cal-Bay property towards the southeast?

A. You will have to use my map. I refuse to use someone else's map.

Q. Let us take a look at Mr. de l'Eau's map——

A. I did not make it.

Q. I will approach it from a different angle. When you made your field studies, do you mean to state, Professor, you did not take advantage of the reports filed by Mr. Byron Norris, to which there were attached his maps and findings?

A. No, sir.

Q. Didn't the Navy turn them over to you?

A. No, sir.

Q. Did you ask for them? A. I did not.

Q. You did not want the aid and assistance of any findings of Mr. Byron Norris, is that right?

A. I did not.

Q. You just wanted to make your own conclusions? A. Most certainly.

Q. So you did not know at the time that you were going over the property approximately the location that Mr. Norris had placed the axis of an alleged anticline, did you?

A. Oh, yes, I was told that.

(Testimony of Nicholas Taliaferro.)

Q. Who told you that?

A. I can't remember the man. I think it was Lieutenant Woodward, if I recollect correctly, and he said, "Here is a map," and I glanced at it. He said, "Do you want it?" I said, "I don't want it, no." [836]

Q. Did you not think it advisable to pick up the map and go to the very location where he had indicated findings of dips, and ascertain whether or not the dips were there?

A. I covered the ground thoroughly.

Q. Then how can you state if you did not know where the dips found by Mr. Norris existed—how can you state that you did not find any such dips?

A. Because I went over that with a fine-tooth comb. I visited it not once, but many times, and I walked back and forth. There is a very steep hillside there, which I remember rather vividly. I climbed it, and I climbed back down it.

Q. I think I climbed with you one day, Professor.

A. Not that one. That was too steep. I had boots on when I climbed that.

Q. Professor, do you mean to state according to your view of the situation that both Mr. John de l'Eau and Mr. Byron Norris are wrong in their findings of an anticlinal structure? A. I do.

Q. Please tell me where the gas came from that was produced in October, 1943, from whatever formation you say it was?

A. What do you mean by produced?

(Testimony of Nicholas Taliaferro.)

Q. Where did it come from? How did it get there?

A. Produced from? The well was never put on production.

Q. Was there a Johnston formation test made?

A. Yes.

Q. What did the test show?

A. One test, the first test, [838] was 100,000 cubic feet; the second test was 125,000 cubic feet, which is certainly not a commercial quantity at that depth.

Q. Professor, have you ever worked drilling oil wells?

A. I have never worked on a rig. I have spent many a cold night on a derrick floor watching cores come out.

Q. Do you know whether or not a Johnston formation test made on a formation for the purposes of indicating its production is conclusive as to the maximum production of the sand tested?

A. I am not a petroleum engineer and have made no claims of being a petroleum engineer.

Q. Did you have the benefit of a study of a core examined by Paul P. Goudkoff on November 10, 1944, the core having been taken from the 4,823-foot level and the 4,843-foot level of the Cal Bay well when you made your report? A. No.

Q. Do you know Paul P. Goudkoff?

A. Oh, yes, yes, very well.

Q. He is an eminent geologist and paleontologist?

A. He is a micro-paleontologist, yes.

(Testimony of Nicholas Taliaferro.)

Q. You have no reason to dispute his conclusions of findings, have you?

A. Not based upon micro-paleontology, no.

Q. And if Paul P. Goudkoff concludes that a core taken from the 4,823-4,843-foot interval of the Cal Bay Faria well resembled a Meganos formation, would you say that the well had already penetrated the Cretaceous at 4,300 feet? A. Yes, sir.

Q. Is the Cretaceous above the Meganos?

A. No, sir.

Mr. Bourquin: You are not implying, Counsel, that Mr. Goudkoff made any such assertion predicated on a micro-paleontologist's examination? He said lithographically.

The Witness: Lithologically.

Mr. Scampini: Let us take it from the lithological approach. Lithology, I suppose, refers to the rock appearance of the formation, doesn't it?

A. Yes, that is the appearance of the rock.

Q. Do you pretend to be a paleontologist experienced in the study?

A. No, I have gathered a little information on it, but I would not want to say I knew anything about it.

Q. Professor, if Paul P. Goudkoff states that the core found at the interval I just stated, from a lithological appearance, resembled the Meganos, would you say that he was in error?

A. I would say that he was very likely in error, yes, very likely.

(Testimony of Nicholas Taliaferro.)

Q. And the only basis for your conclusion that he might be in error is the fact that you examined the electric log of the Cal Bay well, isn't that right?

A. Oh, no.

Q. You never examined any of the cores yourself? A. No.

Q. You never discussed with anyone, did you, the question of the cores obtained from the Cal Bay well with anyone who had examined them?

A. Oh, yes.

Q. Who did you talk it over with?

A. I talked it over [839] with the Standard people, who said they had examined them and had collected them and who had washed samples from them, and they found Cretaceous. Now, I did not ask them where. I thought I could measure the section and estimate, roughly, myself, where they had gotten the Cretaceous, which I did.

Q. And you have concluded from your measurement of the section that the Cretaceous in the Faria well was crossed at about forty-three hundred feet?

A. Somewhere between forty-three thirty-seven and forty-three seventy-two, because of the lack of close coring intervals.

Q. Then how did you account for the existence of the Meganos below the Cretaceous in the Faria well? A. I do not think there is.

Q. You dispute the findings of Paul P. Goudkoff, do you?

A. I certainly do. May I ask, does he state that he found foraminifera—does he give a list of the foraminifera there?

(Testimony of Nicholas Taliaferro.)

Q. I refer you to the findings and the report?

A. May I read this aloud?

Q. Yes.

A. "4823'—4843'—Dark gray, impure sand grading into massive sandy shale. Contains no organic remains except scattered carbonaceous particles.

"Remark: Because of the lack of diagnostic organic remains, the age of the formation represented by samples cannot be [840] determined. Lithologically the samples resemble some of those obtained from the Cerros member (Meganos stage of Clark and Vokes) cored by the Standard Oil Community Suisun well No. 1."

That is a lithologic thing and I do not think he is necessarily a competent judge of lithology.

Q. Did you judge or make any studies of lithology, of the lithology of any of the Cal Bay cores?

A. No.

Q. I will now ask you, Professor, whether or not in your opinion it is possible for a formation to be productive of 125,000 cubic feet of gas on a Johnston formation test without there being a closed structure to trap the gas therein?

A. Most certainly.

Q. And where would the gas be coming from that resulted in a volume of 125,000 cubic feet per day?

Mr. Bourquin: That was the rate. Let us be sure of that.

Q. (By Mr. Scampini): Your opinion.

(Testimony of Nicholas Taliaferro.)

A. I imagine while the well was being repaired some open hole below, it started accumulating slowly in that over a period of time, and does not necessarily by any manner of means represent the rate of the well.

Q. Professor, are you just assuming something now?

A. I am saying that is a decided possibility.

Q. That is only a possibility, though, isn't it?

A. Yes, it is a strong possibility. [841]

Q. It could also be a closed structure, could it not, Professor?

A. Oh, no.

Q. Why couldn't it be a closed structure, in your opinion?

A. Because I have examined the area carefully and there is certainly no closure anywhere.

Q. Let us approach it then from this angle: there is a closure on the west side of the Cal Bay property resulting from the Willow Pass fault, isn't there?

A. No, sir.

Q. You deny that also?

A. Yes, sir.

Q. Does the Willow Pass fault act as a seal on the southeast plunge of this structure?

A. There isn't any southeast plunge.

Q. You mean that there is no structure?

A. No, there isn't any structure. It is open, open to the world, as I have said.

Q. So that Mr. Norris and Mr. de l' Eau are in your opinion both in error as to the existence of any structure here?

A. Yes, sir.

Q. Did you discuss your findings with Mr. Norris at all?

A. No.

(Testimony of Nicholas Taliaferro.)

Q. Did you go down to ask him, or did you ask him to forward to you some of his working notes?

A. No.

Q. Did you discuss it with Mr. de l' Eau?

A. No.

Q. Have you any reason for assuming that Mr. Norris or Mr. de l' Eau, or either of them do not know their business as geologists? A. Oh, no.

Q. Would you concede that Mr. Norris' ability as a geologist is the equal of the average geologist in the business? A. I couldn't say.

The Court: Counsel has not objected to that, but this Jury has enough to do to try to decide this case without deciding the relative merits of the experts.

Mr. Scampini: I suppose so, your Honor. I will withdraw question.

Q. Referring to the gas seepage on the Mary Faria property, Professor, you have heard the testimony that for a period of approximately twenty to twenty-five years that seepage has been in evidence, and for many years it burned day and night, have you not? A. Yes, sir.

Q. In your opinion, where did the gas come from that was feeding that flame throughout all those years?

A. It came from the organic contents of the sediment down below which seeped up through a cracked and faulted stone and escaped at the surface.

(Testimony of Nicholas Taliaferro.)

Q. You do concede, then, the existence of formations down below capable of producing natural gas?

A. Oh, yes, certainly.

Q. You only deny the existence of a closed structure or trap on the subject properties, is that right?

A. Yes. The most favorable horizons, however, since you brought that up, have been tested and found wanting. [843]

Q. Found wanting in your opinion as to commercial quantities, is that right?

A. Yes sir.

Q. Have you any knowledge as to what formation was penetrated in November of 1944 on the occasion of the blowout? Have you any personal knowledge as to the capacity of production from that formation?

A. I do not think anybody has.

Q. So how can you state whether or not they have been found wanting?

A. They were down in the Cretaceous at that time, and the Cretaceous is certainly not a very happy place to be in the well in general. There have been some commercial fields, but they have been few and far between.

Q. Professor, will you concede that in the Santa Maria field they are now producing some very large volumes of crude oil and petroleum from the Cretaceous?

A. No.

Q. You deny that?

A. I certainly do.

Q. Is it not true that in recent years it has become acknowledged that the production of crude

(Testimony of Nicholas Taliaferro.)
petroleum in the Santa Maria field is coming from the Knoxville formation?

A. The Knoxville is not Cretaceous. The Knoxville is upper Jurassic.

Q. It is the contact between the Jurassic and Cretaceous, isn't it?

A. No, it is the upper Jurassic.

Q. Do you deny, or have you any knowledge that it is coming from that formation?

A. Yes, it is coming from that, but it leaks down from the overlying miocene. [844]

Q. It leaks downward? A. Yes.

Q. Tell me whether gas can leak downward as petroleum can? A. Not very well.

Q. Could the gas that was discovered in 1943 at the 4,300-foot level *possibly the* same gas that was discovered in the Faria well in November 1944, at 4,800 feet? A. No, no.

Q. So it must have been an entirely new sand, is that right?

A. If there was a gas sand there, it would be a new sand, yes.

Q. You have no personal knowledge as to whether or not any gas came from the new sand penetrated in November? A. No.

Q. With respect to the productive capacity of the Cretaceous, do you know the volume of production per cubic feet per day of some of the wells drilled on the Tracy field?

A. Oh, I have had those figures. I don't remember the exact figures. They were well up in the several millions of cubic feet.

(Testimony of Nicholas Taliaferro.)

Q. How about the Vernalis field?

A. That is rather new. I am not familiar—I know—I don't know whether they have rated them yet or not.

Q. Did you examine the log of the well drilled by the Standard Oil Company at Honker Bay?

A. Yes, sir.

Q. At what depth did they encounter the Martinez formation in that well?

A. They reported they encountered the top of the Martinez below the Ione clays at 7,162. [845]

Q. How many miles to the northwest of the Cal Bay property is the Honker Bay well of the Standard Oil? A. Six miles.

Q. Did you find any interruption in the normal sequence of the geological formations between the Cal Bay property and the Honker Bay property other than normal dipping?

A. Honker Bay would be on up in here, yes. The pliocene comes in on this side of the fault and comes around like this, and comes in here. This is all pliocene, indicating that that is going down very rapidly.

Q. Do you know the production of gas from the Honker Bay well obtained from the Martinez formation at 7,200 feet? A. No.

Q. Would you say it runs into several million cubic feet per day?

A. Yes, somewhere in that neighborhood, I have heard.

(Testimony of Nicholas Taliaferro.)

Q. Did you not think, when you were given the information, the Martinez was found at an extremely low depth in the Honker Bay well?

A. Oh, no.

Q. Is that where you expected to find it?

A. No, I didn't expect to find it. That is all buried in what is known as a geophysical plane. It is not a surface plane.

Q. How do you account for the fact that the Martinez was found at Honker Bay at 7,200 feet, approximately six miles from the Cal Bay property, whereas in the Cal Bay property you say it appears at around 4,300 feet?

A. That would only be a drop of 3,000 feet in six miles. That is a very gentle angle. [846]

Q. It is a gentle dip, is it not?

A. I mean, if it continued like that.

Q. Have you any information that would indicate that it does not continue that way to Honker Bay?

A. I haven't personally, no.

Mr. Scampini: Does the Court wish to continue?

The Court: I do not wish to impose on the Jury, but this case is taking an inordinately long time and some of the jurors mentioned that they have other engagements, and we have got to carry on and finish this case. I have other litigants who are waiting. I think we will have to run longer hours and get through it as soon as we can.

Mr. Scampini: I do not think I will have many more questions, but I would like to ask permission to ask for a recess at this time, and I do not think

my examination will last more than ten or fifteen minutes more in the morning.

Q. (By the Court): Doctor, there was some mention of the fact that you went over the ground with the attorney for the property owner here. Was that in connection with this case?

A. (By the Witness): No, sir. He happened to be out there one day when I was out there. I was there with two of the lieutenants from the Navy. He wished to take a picture of the gas well and they asked me to be present. That was all.

The Court: How many more witnesses have you got?

Mr. Bourquin: Two, your Honor, with the bare possibility [847] that we would have a very short witness, but I doubt it. If we do, it shouldn't take ten minutes. We will have two valuation witnesses.

The Court: Do you think you can finish tomorrow?

Mr. Bourquin: I feel satisfied we can finish tomorrow.

The Court: We will take an adjournment until tomorrow morning, ladies and gentlemen, at ten o'clock. Please bear in mind the admonition of the Court.

(Thereupon an adjournment was taken until tomorrow, Wednesday, February 5, 1947, at 10:00 o'clock a.m.)

Wednesday, February 5, 1947

10:00 o'Clock A.M.

The Court: United States of America vs. Certain Land in Contra Costa County; on trial.

NICHOLAS TALIAFERRO

recalled.

Cross-Examination

(Resumed)

By Mr. Scampini:

Q. Professor, at the session of yesterday afternoon, if I recollect your testimony, I have not had an opportunity of reading the transcript which is before me, but substantially you made the statement, if I recollect your answer, to the effect that you would not have recommended the drilling of the Cal-Bay well at the location selected, for two main reasons, 1, that, in your opinion, no anticline structure or trap existed at that location, and, secondly, because it was a highly faulted region.

A. That is correct.

Q. Do you always recommend against drilling any kind of a structure wherein it appears that numerous faults cross each other? A. Oh, no.

Q. Isn't it true that a highly faulted region, you look for them sometimes for the purpose of accumulation? A. No, I wouldn't say that.

Q. Are you familiar with the geology of the Rio Vista gas field? A. Not particularly.

Q. Have you read the Bulletin of the State Oil and Gas Supervisor issued by the Department of

(Testimony of Nicholas Taliaferro.)

Natural Resources, Division [849] of Oil and Gas, in 1941, relative to the geology of the Rio Vista Field?

A. Yes, I have read that. I don't remember the details of it. I read a great many things.

Q. Do you recall reading the following statement from the Bulletin:

“The general structure of the Rio Vista gas field is a rather broad, flat, somewhat elongated faulted dome with the axis running northwesterly. Some geologists believe that the field is located in an actual graben.”

That is a sort of an incline or depression, isn't it?

A. No. A graben is a down-faulted area. Lake Tahoe is one.

Q. “And the different settling of small blocks within the field has produced the complicated fault pattern.”

Do you recall reading that statement?

A. I don't recall reading that exact statement. I probably read it. It didn't impress me particularly.

Q. I will show you a map of the Rio Vista gas field and ask you to look at it and state whether or not it is not crossed by four main faults paralleling each other.

A. According to this map it is, yes. May I make a statement?

Q. Yes.

A. Yes. Embodied in the statement you read was this:

“It is a broad, low, closed dome.”

Q. I now ask you to look at the map and state whether or not [850] the field is not crossed by four main faults paralleling each other.

A. According to this map it is crossed by four faults—five, unless that is a road. Yes, it is crossed by faults.

Q. Professor, if you had not made a geological study of the Rio Vista field prior to the commencement of the first well, would you have recommended the drilling of that field in view of the existence of these four faults?

A. The Rio Vista field has absolutely nothing on the surface. I could not have made an examination of it. I have not a seismologist crew. I am one man. I could not have made an examination of it. That requires seismological work and seismological interpretation. Nobody could have made a geological examination of the Rio Vista field because it is buried to the alluvium.

Q. Assuming the dips were apparent to the naked eye, would you have recommended the drilling of the Rio Vista field?

A. Certainly. Had you been able to see the surface and it was a broad, closed dome, you would certainly have recommended, I would certainly have recommended it.

(Testimony of Nicholas Taliaferro.)

Q. How could you have seen a broad dome on the surface when it was all covered over by alluvium?

A. That is a purely hypothetical question.

Q. Please answer it.

A. You could have seen the top of the dome.

Q. That was the way it struck you, the mere presence of faults [851] on the property of the Cal-Bay Corporation by or of itself would not discourage the drilling of a well?

A. That could not have been a broad, closed dome.

Q. The only reason for your conclusion there that you would not have drilled a well is because, in your opinion, it was not a broad, closed dome; is that right? A. It could not be——

Q. Answer the question "Yes" or "No."

The Witness: State your question again.

Mr. Scampini: May the question be read?

(Question read by the reporter.)

The Witness: Yes; not a broad, closed dome.

Q. Referring to your map, will you please state what the meaning of the line which I am now tracing, and which runs generally in a northwesterly-southeasterly direction, and is crossed by an arrow, one pointing northwest, and the other southeasterly, at or about the vicinity of the Cal-Bay Faria well?

A. It is not at or about the vicinity. It is some 2000 feet, or some 2500 feet to the northwest.

Q. What is that?

A. That is an anticline axis. As I explained yesterday, it was so weak you could hardly ascertain it.

(Testimony of Nicholas Taliaferro.)

Q. It shows sufficiently to see it over at that location, and it could have very well extended on both sides of the line, could it not (indicating)?

A. How far? [852]

Q. I don't know. I am asking you.

A. Well, I can't tell. I show on my map that it does not extend, because the dips are rapidly reversed in another direction, right here, and right here (indicating).

Q. Aren't they reversed south of the main Willows Pass Fault?

A. I don't get your question.

Q. Aren't they found southwesterly of the main Willows Pass Fault? A. No.

Q. Where are they?

A. The dips are not toward the southwesterly, but they are toward the northeast.

Q. Is that a reversal of the dip which is found on the line indicated by you?

A. The general dip is in this direction, so when you speak of a reversal your question means a dip in this direction (indicating).

Q. Yes, that is correct. A. Yes.

Q. Professor, you heard the testimony of Mr. Norris in court, did you not? A. Yes.

Q. You heard him say before he staked out the well he used a bulldozer and excavated, tore down a portion of the hill in order to find appropriate dips before he made up his mind where to locate the well? A. Yes.

(Testimony of Nicholas Taliaferro.)

Q. You heard him say that at the place where he finally located the well he found a series of dips which indicated the anticline going on one side of the axis to the northwest, and the other side of the axis to the southeast. You heard that [853] statement? A. I heard the statement, yes.

Q. Did you go to the location where the well had been drilled to ascertain whether or not any such dip existed there?

A. I certainly did. I spent three days in an intensive search in that area. But I also said that the Navy, in their construction work, opened up a large quarry a very short distance from the well, a large quarry. I don't believe that was opened at the time of earlier examination, but in that quarry you could see the rocks very plainly exposed, and they all dipped toward the northeast at varying angles.

Q. Please answer my question. Did you find any of the dips at the location that Mr. Norris asserts exists there? A. I did not.

Q. For the purpose of arriving at your conclusion and submitting your findings and report to the Navy, did you take any statements from any of the men that had worked on the well?

A. I did not.

Q. Or talk to any of them?

A. I did not. The well had been abandoned; it was not my business to hunt up the men who drilled the well.

Q. Did you study the log of the Faria well?

A. Yes.

(Testimony of Nicholas Taliaferro.)

Q. When you say "the log," do you mean the actual log of the well, or do you mean the electric log, which is another name for the Schlumberger?

A. I looked at the Schlumberger log and I also looked at the log as submitted to the State Division of [854] Mines.

Q. I now show you a set of papers entitled, "Well Summary Reports, Division of Oil and Gas," and I will ask you whether or not that is a copy of the log that you examined, furnished to you or seen by you at the office of the Division of Oil and Gas.

A. It looks very much like it. I think—may I examine one place?

Q. Look at every page? A. Yes.

Q. There is attached to the log seen by you a photostat of a Schlumberger, which I shall now show you, Defendants' Exhibit No. 28.

A. Yes.

Mr. Scampini: I will now offer in evidence—

The Witness: I don't know whether these things in red were on it at the time.

Mr. Bourquin: Well, I think we will object to it as incompetent. The doctor has not testified that he based his findings on the statement filed by the Cal-Bay people.

The Court: I think counsel will be entitled to examine him concerning the log that he looked at, whether or not it is proper to offer this long document in evidence is another matter.

Mr. Scampini: I will offer it—

(Testimony of Nicholas Taliaferro.)

The Court: You are asking him whether he looked at it.

Mr. Scampini: I will offer it for the purpose of identification.

The Court: Of course, you have a perfect right to examine [855] him concerning it.

Mr. Bourquin: I think it has already been shown in this record that the purported formation levels on the electric log were imposed upon that log by the defendants' witnesses.

(The electric log was marked Defendants' Exhibit 36 For Identification.)

Q. (By Mr. Scampini): For the purpose of enabling you to correlate the formations disclosed by the electric log of the Cal-Bay well and the information supplied in the well log, did you examine the electric log and the log of the well drilled by Standard Oil at Honker Bay, known as the Community Well No. 1?

A. I never saw the Community Well No. 1. The only log I have seen from the Honker Bay was A. O. Stewart No. 1.

Q. Where was the A. O. Stewart well drilled?

A. About six miles northwest of Cal-Bay.

Q. Wasn't the A. O. Stewart well drilled at Suisun Bay, or was it Honker Bay?

A. Honker Bay.

Q. Are you on the payroll of Standard Oil Company? A. I am not.

Q. Have you done work for the Standard Oil Company?

(Testimony of Nicholas Taliaferro.)

A. 25 years ago I did some consulting work for them in Mexico, yes.

Q. Have you done work for any of the Standard Oil group in recent years? A. No. [856]

Q. Do you know how many whipstocks were set in the drilling of the well at Honker Bay, in the first well over there? A. I have no idea.

Mr. Bourquin: We object to this as immaterial and irrelevant, and not proper cross-examination.

The Court: The witness says he doesn't know. That ends it.

Q. (By Mr. Scampini): Have you got the electric log of the well seen by you and furnished to you by Standard Oil relative to the Stewart well?

A. No, I haven't it with me.

Q. Then, professor, will you please state how you are able to correlate the formations indicated by Cal-Bay electric log with the formations indicated by the electric log of the well drilled by Standard Oil?

A. I did not make any such correlation. You look at the log. The formation stands out very readily. All you have to do is look at it.

Q. Does that electric log state what the formation is?

A. It doesn't write in on but it tells you what it is.

Q. It tells one who is well versed in identifying an electric log? A. Yes.

(Testimony of Nicholas Taliaferro.)

Q. Had you examined electric logs of wells drilled in this vicinity prior to the examination made by you of the Cal-Bay and the Stewart Wells?

A. I have been shown such logs.

Mr. Bourquin: It seems to be going far afield.

Mr. Scampini: I am testing the knowledge and source of his [857] information upon which he bases his statements.

Mr. Bourquin: Well, I did not understand the witness yesterday to base any statement on experience in any other wells unless they were at the Kellar well, and that is not any of the wells that counsel is talking about. It is immaterial.

The Court: You can answer that.

The Witness: I have been shown logs. I never looked at them in any particular interest. They were just a matter of passing interest; someone would show me a log. I have seen logs of Rio Vista field.

The Court: I think what counsel refers to is in preparing to give your opinion in this particular matter did you examine such log? A. No.

Mr. Scampini: Will you please state, Professor, what there is about the electric log of the Cal-Bay well that indicates to you that the Martinez formation was not encountered at 4300 feet, as thereon stated by the words "Top of Martinez?"

Mr. Bourquin: As thereon placed by defendants' witnesses.

Mr. Scampini: As thereon placed——

The Court: In other words, you are asking him—I think that was already covered.

(Testimony of Nicholas Taliaferro.)

Mr. Bourquin: It was covered yesterday.

The Court: He may answer.

The Witness: My only feeling as to that is that well obviously [858] went out of the Domengine at about 4180 feet, somewhere in that neighborhood, and there is nothing below that to indicate whether you went into Martinez or what you went into, except on one point where you went into Nortonville shale, and I agree with——

Q. Do you agree we went out of the Domengine at approximately 4100 feet?

A. A little over that.

Q. Do you agree that below the Domengine you still have a Meganos formation ordinarily before you encounter the Martinez?

Mr. Bourquin: Well, I would like to——

Mr. Scampini: I am asking, do you agree, and I am using this log, you would encounter the Meganos formation between the Domengine and Martinez?

A. Do you want me to go into a discussion of the Martinez——

Q. Please answer my question.

The Court: I can see the difficulty that arises in a matter like that.

The Witness: The names Martinez and Meganos as used in our oil field parlance often have little of scientific backing. In the top section of the Martinez formation——

Mr. Scampini: I object to this witness going into a long discourse on hypothetical or theoretical matters. I ask for an answer to my question.

(Testimony of Nicholas Taliaferro.)

The Court: Well, he may give an explanation after he answers. Suppose you go back. [859]

Mr. Scampini: I will withdraw the objection. We will save some time, your Honor.

Mr. Bourquin: I don't think it is proper for you to open the subject and as soon as the subject is open to endeavor to shut the witness off.

Mr. Scampini: That matter was not opened generally, counsel.

The Witness: I think I can state the question you asked; do you find beneath the Domengine the Meganos?

Q. Yes.

A. Then you find beneath the Meganos the Martinez.

Q. Yes.

A. So the section is normal and if, as I pointed out yesterday, all the Meganos had not been removed by erosion that would be the normal sequence, yes.

Q. Did you find anything abnormal in sequence in the log or cross section of the formation of the Cal-Bay well?

A. The log will not distinguish between Martinez and the Meganos.

Q. Were you able to determine the thickness of the Meganos formation that you found in the Faria well?

A. I estimated the thickness of both the Martinez and the Meganos together, which were not separated in the well log, at about 150 to 170 feet.

(Testimony of Nicholas Taliaferro.)

The reason you can't get a closer figure or greater latitude than that is the coring was not continuous in the well.

Q. What information did you have upon which you base your statement that the thickness of the Meganos and the Martinez formations [860] combined would be approximately 150 or 170 feet?

Mr. Bourquin: I think this was covered yesterday afternoon.

Mr. Scampini: I respectfully submit I never touched upon it.

The Court: I thought you did. It is difficult for even a skilled person to follow it, but I will allow it. Read the question, please.

(Question read by the reporter.)

The Witness: I had two things, as I explained yesterday, I thought; one was the general regional thinning northward of both the Meganos and the Martinez being truncated upon the overlap of the Domengine. The other was that certain foraminifera reported to me which checked to the conclusion that at the interval of 4337 to 4372 I believe the typical unmistakable cretaceous foraminifera were found.

Q. Is that the only basis you had for your conclusion? A. That is, I thought, sufficient.

Q. Did you prepare a cross section of the formations penetrated by the Faria well No. 1?

A. Yes.

Q. Let me see it, please.

A. Those cross sections are marked on the map.

(Testimony of Nicholas Taliaferro.)

Mr. Scampini: I ask this be marked for identification as Exhibit next in order.

Mr. Bourquin: We will agree it may go into evidence if counsel desires. [861]

Mr. Scampini: I ask it be marked for identification.

(The document was marked Defendants' Exhibit 37 For Identification.)

Mr. Scampini: I will ask you to take a look at a cross section of the Cal-Bay Corporation property along the axial line prepared by Mr. John de l' Eau, and I will ask you to examine it and state whether or not you agree with the outlines of the formations penetrated and the stated thickness of the formations as found on the map before you.

A. May I ask questions regarding it? I notice here an area marked in yellow that extends to an approximate depth of 1570 feet, and says, "Tum equals miocene." I know of no miocene in the Cal-Bay well, so I cannot comment on it.

Q. Now, then, you will disagree with the cross section before you. Compare it with that, if you wish.

A. No, that's all right. I'll look at it. At the top of Nortonville he puts it 3500 feet. That I agree with. The top of the Domengine 3870; I agree with that. Beyond that I do not agree with it.

Mr. Scampini: I will ask that this be marked as exhibit next in order for the purpose of identification, your Honor.

(The cross section was marked Defendants' Exhibit 38 For Identification.)

(Testimony of Nicholas Taliaferro.)

Mr. Scampini: I think I am about through with the witness, your Honor.

Q. Did you ever engage in the business of drilling for oil or gas?

A. You mean did I ever work on a well? [862]

Q. Yes. A. No, I never.

Q. Did you ever engage in the business of drilling for oil or gas by buying into the business?

A. Yes.

Q. Have you ever discovered any oil field during your career for any company for whom you worked, or any company for whom you worked discovered an oil field on location found by you?

A. Not any commercial oil field.

Q. How about gas fields?

A. We have encountered a lot of gas, but we never found any oil field.

Q. In other words, the drilling was made in those cases upon your recommendation, was it not?

A. In some instances.

Q. So that I take it that even professors **can** make mistakes sometimes in their recommendations?

A. Yes. We find in production we make many of them.

Q. The fact we make mistakes does not mean that we are not sometimes right, of course. Is it not generally true that even though you may have the finest geological structure available that can be seen and can be studied in the oil and gas business, the ultimate proof of the pudding is in the oil or gas where you find it?

(Testimony of Nicholas Taliaferro.)

A. That is the way it was understood by the industry probably 40 years ago.

Q. Well, is it not generally true even today?

A. The facts, I think, speak for themselves, that the modern methods of searching for oil have cut down the ratio of dry holes to productive holes a great per cent. [863]

Q. Isn't it true that even with the finest of instruments, like geophysics and all of the history that the geologists have accumulated, it often happens that structures are drilled and found to be dry?

A. Oh, yes.

Q. It often happens that structures are repudiated by the geologists and found to be the most productive thereafter?

A. I don't know of any structure that has been repudiated, that is a good structure or surface, that has been unanimously turned down.

Q. How about the Ten Sections down at Kern County?

A. Ten Sections, that was a geophysical play.

Q. However, the geologists repudiated——

Mr. Bourquin: Wait; let him finish.

The Witness: No, not that I know of.

Q. (By Mr. Scampini): How about Rio Bravo?

A. I couldn't tell you the details of Rio Bravo.

Redirect Examination

By Mr. Bourquin:

Q. Doctor, I take it on this subject Counsel asked you, the geology business is to determine the

[Testimony of Nicholas Taliaferro.]

favorability or unfavorability of the structure geologically, is that true? A. Yes, sir.

Q. He will pass upon whether there exists a structure that may contain a deposit?

A. Yes, sir.

Q. Whether it does or not is a matter for exploration? A. Yes, sir.

Q. And it is true, I suppose, that many favorable structures have been explored to no avail?

A. Yes, sir.

Q. Yesterday Counsel was asking you about the distances that this well was from certain points. I think you cleared up this morning that this well was located about two thousand feet off the extension of that little anticline there, is that true?

A. I would have to measure it. It is somewhere in that vicinity. It is a very, very weak anticline. You can hardly notice it.

Q. He was also asking you yesterday how near or how far the Cal Bay well was to this fault, and I thought you said it was 900 feet or 600 feet?

A. 900 feet.

Q. 900 feet. Now, Doctor, clearing this up—that is, this big fault that is shown on this north-west-southeast line? A. Yes, sir.

Q. And I will point to the well here. Now, is it correct to [835] say that fault is a vertical fault, that is, the fault that you find on top of the ground? Does it go straight down?

A. No, that is a thrust fault, an exceedingly common type of fault in California, whereby, as I

(Testimony of Nicholas Taliaferro.)

mentioned yesterday, this side had been moved to the southwest, the northeast side had been moved to the southwest of this fault which dips down underneath the region. The fault is rather a low angle down here, steepening to the north, which is the common habit of thrust faults.

Q. So that we will understand that, did you find that that fault, when you speak of thrusts, that fault, as it went below the surface, dished in the direction, if I may use that term, dished in the direction of the Cal Bay well? A. Yes, sir.

Q. It did. In other words, a continuation of it would take it across and under the Cal Bay penetration? A. Yes, sir.

Q. Doctor, from your investigation and findings, will you tell us this: Did the Cal Bay well penetrate that fault? Did it cross through it?

A. In my opinion it did. It would have been impossible to avoid going through that fault, because of its dip.

Q. Now, this cross-section that Counsel asked you about, does that give us any information on that subject?

A. It gives me an interpretation of the information. That is all that I can say. [866]

Q. And this, too, was a cross-section that you prepared from the material that you gathered on the ground, was it? A. Yes, sir.

Mr. Bourquin: We will offer it in evidence, if the Court please, as Government's exhibit next in order.

(Testimony of Nicholas Taliaferro.)

The Court: It may be admitted.

(The map in question was thereupon received in evidence and marked Plaintiff's Exhibit X.)

Q. (By Mr. Bourquin): Is that a correct way to put that up, Doctor? A. Yes, sir.

Q. Doctor, would you be good enough to take the pointer so that the Jury may see what you are pointing to and tell us what your cross-section map discloses in that respect?

A. There are three cross-sections, and I might point them out. The upper one is shown by this line which goes along the intersection of the Arnold Industrial Highway and the Willow Pass Road in a northeast-southwest direction; Section D-B is through the Cal Bay well; Section C-C is a section through the Kellar well, the Standard Oil Company well.

Q. You are in the way of the Jury.

A. Pardon me. The symbols are the same. This is the Markley. It is labelled the Nortonville shale, the lower part of the Markley; this is the Domengine; this is the Martinez and Meganos combined; and this is the Cretaceous by the symbols used. The well is located here (indicating).

Q. You are pointing to the center cross-section on the map; which well is there?

A. The Cal Bay.

Q. The Cal Bay well?

A. In my opinion that well must have crossed this thrust fault somewhere in its course. One reason for that is, of course, the dip of the fault

(Testimony of Nicholas Taliaferro.)

back toward the wall, and the other is the apparent thickening, the rather unexplainable thickening of the Markley formation. The fault is shown crossing the Cal Bay well somewhere around twenty-seven or twenty-eight hundred feet.

Q. In other words, you have on this cross-section in the center of this exhibit, Plaintiff's Exhibit X, shown the trajectory, if I may call it that, or projection of the Cal Bay well?

A. A cross-section through as though you were standing looking at it.

Q. Looking at it across the ground from underneath? A. The side.

Q. And you show on here that the well crossed that thrust fault, that big fault thrusting under at a point, you say, about twenty-seven hundred feet or thereabouts? A. Thereabouts.

Q. Does the same cross-section below with reference to the Kellar well what you described yesterday of how the Kellar well had three times penetrated the same structure?

A. The same beds, yes.

Q. You will have to get on the other side, Doctor. You still [868] have your university habit.

A. I have many of them. This was clearly shown on the electric log, that it penetrated the Domengine and then again penetrated the Domengine and then again penetrated the Domengine—three times. The once was almost complete, another a partial penetration, and the third penetra-

(Testimony of Nicholas Taliaferro.)

tion was the complete penetration of the Domengine. In my opinion that can only be explained by a bedding thrust.

Q. (By Mr. Scampini): You are referring to the Kellar well, aren't you?

A. I am referring to the Kellar well, yes.

Q. Not to the Cal Bay?

A. No. And in that movement these beds buckled; they might have, you might say, stubbed their toe and tended to roll over. That is the normal thing.

Q. In other words, the bed is initially like two hands together (indicating), and when it is folded, it is folded over—stubbed its toes—and presents three planes? A. Slid over, yes.

Q. So we will understand this, Doctor, for any further reference, what does the color at the bottom of each of the cross-sections, the green, represent?

A. That is the customary color of the Cretaceous, green, standard the world over.

Q. So we will know what it has reference to, what does that top-section refer to that you presented there?

A. That is the section I mentioned through the northeast-southwest section, through the intersection of the Arnold Industrial [869] Highway and the Willow Pass Road that goes through that intersection.

Q. Is that a point between the location of the Cal Bay and the Kellar well?

A. No, sir, that is a point north of the Cal Bay.

(Testimony of Nicholas Taliaferro.)

Q. North of Cal Bay. All right.

A. Northwest.

Q. Doctor, one last question: From your examination and study of the geology there, is there any reason to say, or is there any more reason to say that the Cal Bay well would connect with the Honker Bay than to say that the Kellar well would connect with the Honker Bay?

A. None whatsoever.

Mr. Bourquin: I think that is all.

Recross-Examination

By Mr. Scampini:

Q. Professor, referring you to the map which has just been offered in evidence as Plaintiff's Exhibit X, I understood you to say that there was no anticline found by you; will you tell me what the meaning of this anticlinal fold is located on your Section B of your map?

A. That is only an anticline if you tip the plane of the earth about fifty degrees; it is a terrace.

Q. What is the meaning of that fold, that rounded dome-like effect on your section?

A. I do not regard that as a rounded dome-like effect. It is flattened away from the well and then continues on downward.

Q. Do I understand you to say that the only difference then [870] between you and Mr. Norris is that the apex of the anticline is a little further to the northeast than what Mr. Norris claims it is?

A. No, from this map there is clearly no closure in a southwest direction.

Q. I did not ask you that question, Professor. I will ask the reporter to read it to you.

(Question read.)

A. That is not the only difference. I think the dips as shown by Mr. Norris were 25 degrees. I found no dips of that extent. Five or six degrees at the outside, very gentle.

Q. Please state whether or not on your Section B the apex of the anticline shown to exist there is a little farther to the east than as indicated on Mr. Norris' map? A. About two thousand feet.

Q. Please state whether or not in your opinion it would be impossible for the fault which you shown on Section B to the west and the fault which you show to the east to act as a closure or a seal to that anticline?

A. Yes, I think it would be very difficult.

Q. I did not ask you whether it was difficult; I asked you if it was impossible in your experience as a geologist?

A. Yes, it is impossible because the anticline is not closed anywhere.

Q. Please state whether or not a fault at the location that I am now indicating could not act as **a seal to the structure [871]** found in between the two faults in your experience as a geologist?

A. It could not.

Q. What is the meaning of block faulting?

A. Well, it would take me about two hours.

Q. Do not block faults sometimes act as seals and cause traps?

A. I don't understand what you mean by block faulting.

(Testimony of Nicholas Taliaferro.)

Q. Where you have a series of faults, one on each side, or four faults, wouldn't the structure between those four faults be trapped in by the faults around them? A. Not necessarily.

Q. Could it be?

A. Oh, yes, it could be. As a hypothetical question it could be.

Q. You say that the well of the Cal Bay penetrated in your opinion the Willow Pass fault at about twenty-seven or twenty-eight hundred feet, is that right? A. 2764-2768.

Q. Please look at the Schlumberger of the well of the Cal Bay, which is our exhibit in evidence here, and state where on the Schlumberger there is any indication to you of the penetration of a fault at twenty-seven or twenty-eight hundred feet or any other place, the exhibit number being 28?

A. You can't take the penetration of the fault on the Standard well on the Schlumberger. I looked at it for that purpose. I used a statement in the log as furnished to the State Division of Mines as a possible position of the fault.

Q. Would you concede, then, there are no indications of [872] faulting in the Cal Bay well at any place between the surface and the 4300-foot level where the electric log stopped? A. No.

Q. You do concede it?

A. I do not think you can pick those things.

Q. Did you examine the Honker Bay electric log? A. Which well?

(Testimony of Nicholas Taliaferro.)

Q. Rather, the Kellar? A. Oh, yes.

Q. Did you not——

Mr. Bourquin: So we will not be confused, which are you talking about?

Mr. Scampini: I will reframe the question.

Q. Did you examine the electric log of the Kellar well drilled by Standard Oil? A. Yes, sir.

Q. Did you not find on the electric log of the Kellar log indications of faulting by reason of the fact that the same formation was crossed three times?

A. Yes, but of the fault itself there is no indication on the log.

Q. But you did find a crossing of the same formation three times? A. Oh, yes.

Q. Did you find any similarity of formations having been crossed more than once on the electric log of the Cal Bay well?

A. They do not show up in the markings. No one could do that.

Q. I will ask you to take a look at the cross-section of A-B on the map of Mr. de l' Eau, which is Exhibit 32 of the [873] defendants, and you will note on cross-section A-B Mr. de l' Eau has marked a fault to the southeast of the Cal Bay well. Isn't that the same fault that is referred to by you on your cross-section B?

A. It can't be, because I am very positive of the direction of the dip of the fault.

Q. In other words, you disagree with Mr. de l' Eau's findings that the dip of the fault referred to

(Testimony of Glenn Ferguson.)

by you in your Section B is not towards the well, but away from the well, is that right?

A. That was a little involved.

Q. I perhaps did not make——

A. I maintain the fault dips in toward the well. He maintains it dips——

Q. In the other way, in the opposite direction?

A. Yes.

Q. So if Mr. de l' Eau's theories are correct, the Cal Bay well would not have penetrated the fault at any stage of the drilling, would it? A. No.

Mr. Bourquin: I object to that as argumentative, your Honor.

The Court: Yes, sustained.

Mr. Scampini: That is all.

Q. (By the Court): Doctor, before you leave the stand, we have listened in this court room for hours to technical discussions of geology, and in the proper administration of justice, so that those of us who have not the technical knowledge may have just a brief picture of the relationship of [874] the geology to the subject matter of trying to put a value, if any, upon this property, the Court would like to ask you one or two simple questions:

The various geological structures that you have referred to, Cretaceous and the like, are merely descriptive of an area in the earth's surface that depends upon age, isn't that right?

A. Yes, sir.

Q. In other words, the lower down you get in

(Testimony of Nicholas Taliaferro.)

the earth's surface, the longer ago it was that Nature made that deposit of land there?

A. Yes, sir, but may I say——

Q. Generally speaking, is that correct?

A. Yes.

Q. I am not trying to get into any technical discussion. Therefore you find all through any land area, such as in California, or other places, the various geological structures depending upon age in the ground, won't you?

A. Not always. There are some startling exceptions.

Q. Leave out the exceptions. In the subject of geology as it applies at least to the exploration for oil or gas, generally speaking, these structures that you referred to are the structures that represent in point of time where Nature has made deposits, isn't that right?

A. Yes, sir, but there are some oil fields where there have been great thrust faults and they have started with the idea of getting production out of the eocene, started in the miocene, and have gone down through the eocene into the pliocene, very late material, [875] because a great thrust has moved it.

Q. It may be by some cataclysm that Nature has distorted those structures, but I am speaking in general.

A. In general, as you go down they get older.

Q. It is also true, is it not, for the elucidation and information of this Jury, that certain of the

(Testimony of Nicholas Taliaferro.)

structures are places that oil is most likely to be found? A. Certain of the ages.

Q. Certain of the ages; if you have the age present, then it at least presents the possibility of finding oil? A. Yes.

Q. And certain others of the structure do not present the possibility of finding oil there?

A. Yes, your Honor, that is correct.

Q. And so the geologist sets about trying to discover where the stratas are that are most likely to at least afford the opportunity of trying to find the oil there? A. Yes, sir.

Q. That is the purpose of the geologist?

A. That is the purpose of the geologist.

Q. Now, there are hundreds of thousands of places where the geological structures are present where oil might be found where it is not found, is that right? A. That is correct.

Q. And there are literally thousands of explorations that have taken place in areas where the strata is such that there is a possibility of finding oil, where oil and gas have not been found?

A. Yes. [876]

Q. And all the geologist does is to try to find what the strata is, and he tries to find the other physical facts that might indicate that Nature has created a reservoir for oil, and if he finds that, he says that is a likely place to find oil?

A. Yes. He first tries to find source beds that are organic, and then a structure.

(Testimony of Nicholas Taliaferro.)

Q. And then from then on the fellows who are trying to find the oil take up the ball?

A. Yes, sir.

Q. They go and explore, and they may or may not find it there?

A. That is correct.

The Court: That is all I have to ask.

Mr. Bourquin: Shall I call another witness?

The Court: Is this one of your opinion witnesses?

Mr. Bourquin: No, I have a witness who may taken ten or fifteen minutes.

The Court: Suppose you put him on.

GLENN FERGUSON

called as a witness on behalf of the plaintiff; and being first duly sworn, testified as follows:

The Clerk: State your name to the Court and Jury.

A. Glenn Ferguson.

Direct Examination

By Mr. Bourquin:

Q. Mr. Ferguson, what is your business or profession?

A. Micro-paleontologist. [877]

Q. Where do you come from?

A. Bakersfield, California.

Q. Are you the same Ferguson, the micro-paleontologist, we heard referred to last week that examined some of the cores on the Cal-Bay well in 1943?

(Testimony of Glenn Ferguson.)

A. I presume so. I examined samples from that well at that time.

Q. Would you just tell us in your own words, Mr. Ferguson, what a micro-paleontologist's examination of a core sample consists of?

A. Yes. The geologist and the micro-paleontologist in the present scheme of oil field development work as a team. The geologist, or usually some younger member of the geological department will make collections of core samples at the well at the time the well is drilling or subsequently, or shortly subsequently thereafter.

The Court: May I interrupt just a moment?

Mr. Bourquin: Yes, your Honor.

The Court: It does not appear to me that at any stage of this case it has ever been explained to the Jury, although they may have gotten it, what a core is. The term has been used a great many times, and I think it might be explained to the jury, and perhaps with the consent of all defendants and the plaintiff, it is a piece of section of land or strata that is brought up by an instrument during the course of drilling, is that right?

The Witness: Yes, that is essentially correct. A core is obtained generally through a hollow bit. The end of [878] the bit is hollow with a barrel inside, and it simply drills around and leaves a portion of the formation sticking up through the core barrel, and it has a type of catcher that breaks the formation loose, and then they can pull the core either out by means of removing the drill pipe from

(Testimony of Glenn Ferguson.)

the well or in some instances it can be removed by means of a wire line. They have a cable that runs down sometimes to pick up a core or core barrel, which they call a wire line core barrel, and the core is simply a portion of the formation obtained from the bottom of the hole at the time of the drilling.

The Court: I am sorry to have interrupted.

Mr. Bourquin: I appreciate that, your Honor. I think that is right. Nobody has taken occasion to go into that.

The Witness: These samples, to go on with my story, are obtained from the cores at any depths. The core, as it is removed from the core barrel, is usually labeled as pertaining to depth, and then those samples are obtained and usually placed in bags, or sample bags, and labeled as to depth, and delivered to the geological laboratory, where it becomes the duty of the micro-paleontologist to examine those cores with the aid of the microscope.

Generally the samples are disintegrated by means of boiling the core samples in caustic soda or sometimes water, as the case may be, to soften or slake the formation. Those samples, after they have been slaked, are usually sluffed [879] through a series of screens. The finest usually is 100 or 150 mesh—in other words, that means 150 or 100, as the case may be, very tiny wires to the inch, which leaves very, very fine openings for the screen.

All of the very finest material is washed through, leaving on the fine screen a residue consisting usu-

(Testimony of Glenn Ferguson.)

ally of the organic material present in the core sample, together with sand grains, and possibly some small particles of carbonaceous matter and shale particles.

Then the material is dried and examined, and usually we find in that residue a series or a number—not always, but generally we find a number of organisms called foraminifera. Foraminifera are micro-organisms that are generally unicellular when living, but we find in these cores, of course, only the fossil remains of those foraminifera. They are nothing more to the layman than small microscopic seashells. These seashells have been classified through the years according to the genera or genus as well as the species. We have found with study over a number of years that certain ones of those individual species have stratigraphic significance. I mean by that that they will be confined to certain intervals in drilling downward through different formations. They will be confined may some of them to only a few feet, sometimes others will range through an interval of several hundreds of feet. We chart the range of these species, the stratigraphic [880] range down through the formations, and by comparison of one well with another we are able to determine not only the age of the formations penetrated, but we are able to check the relative depths of the different formations penetrated in one well as compared to another well. Thus in such a manner we can determine the sub-surface structure of formations. At least we can interpret the sub-

(Testimony of Glenn Ferguson.)

surface structure and in so doing we can usually arrive at some—very often we can arrive at the better places to drill another well. We have to start out generally from scratch and then by obtaining information from some holes that may prove to be dry wells, we can very often make better locations by this means of sub-surface survey.

In going back to the thought of the geologist and the micro-paleontologist working as a team, we have to depend on the different geologists to sample these cores and send them to our laboratory. We have learned that they are reliable, as you can readily appreciate from the fact that we have been able to narrow down and make oil discoveries from such a study. I believe in general that constitutes the duties of a micro-paleontologist.

Q. Mr. Ferguson, did you make your micro-paleontologist's examination of cores taken from the Cal-Bay well during the course of its exploration during the year 1943? A. Yes, I did. [881]

Q. Did you come to the micro-paleontologist's conclusion as to what formation or bed the well had penetrated in that 1943 exploration?

A. Yes.

Q. Will you tell us, please, what it was?

A. May I refer to my notes to refresh my memory? I found in the course of the study that the Markley sand, which you have all heard mentioned here before, extended to a depth of 3,500 feet, at which depth the Nortonville shale was penetrated. The Nortonville shale was approximately 305 feet

(Testimony of Glenn Ferguson.)

thick. The Domengine formation underlying the Nortonville shale was recognized as having a thickness of approximately 92 feet. Beneath the Domengine a white sand was penetrated. That white sand had no organic remains. However, based on the sequence—and that is a tool that geologists use to determine or help or assist in determining the age of formations because it comes next in sequence—that sand was presumed to be related to the Lone sand or it possibly be termed as a portion of the Capay. Some of these different names are subject to variations depending upon a matter of definition.

Beneath this white sand, which was 285 feet thick——

Q. What depth are you at now?

A. The Nortonville shale extended between 3,805 and 3,897; the Domengine, if I may review this a minute, extended from 3,897 to 4,189. No, I am sorry. I misread that. The Domengine extended from 3,805 to 3,897. The white sand, which I just referred to, extended [882] from 3,897 to 4,182. Then beneath the white sand another series of beds were penetrated, which contained a relatively meager micro-fauna and may be subject to some question as to the exact determination. But based on the species present it is presumed to be the Capay formation, or what we used to term Meganos E Division of Clark.

Then beneath the Capay, or the Meganos, if you so choose to call it that, we found an interval

(Testimony of Glenn Ferguson.)

of about a hundred and twenty-two feet, which contained a very meager fauna. The exact determination is subject to some question. It may be Martinez or it may be Cretaceous. The evidence is not too clear.

That gets us to 4,337 feet. The interval below that point, from 4,337 to 4,398, contained a Cretaceous fauna, including species which are well recognized, and I think any micro-paleontologist having access to the same group of species would identify it as Cretaceous.

This lower portion was first considered—the portion from 4,215 to 4,237, the interval which is subject to question, I first considered to be Martinez. On subsequent study, in a close scrutiny of a portion of the carbonized wood fragment,—the flora we call it—are found in the core samples, some of those species strongly suggest it to be Cretaceous, although that perhaps is not a positive means of identification.

Q. When we get to the level where it had the one characteristic [883] and not a dual there, then, at what level did you find the well penetrated the Cretaceous?

A. The first positive fauna occurred at 4,337.

Mr. Bourquin: 4,337 feet. You may cross-examine.

The Court: We will take the morning recess at this time, ladies and gentlemen. Please bear in mind the admonition of the Court.

(Recess.) [883-a]

(Testimony of Glenn Ferguson.)

The Court: You may proceed.

Mr. Bourquin: I have one further question I would like to ask this witness.

Q. Mr. Ferguson, will you refer again to your data and tell us where it was that you located or found the cores showing the Markley—is that the right term?

A. Yes. The Markley is a sand made up of upper eocene. In this well it extended from presumably the surface, my first sample was 160 feet, from that point to 3500 feet.

Q. Was that from your experience usual or unusual thickness of Markley?

A. Yes, it is quite considerably thicker than normal.

Q. What would explain that?

A. One of two things; first, steep dips or thrust faulted.

Q. When you say thrust faults, you mean penetration by a fault?

A. Duplication of sections such as we talked about here with Dr. Taliaferro?

A. Yes.

Mr. Bourquin: No further questions.

Cross-Examination

By Mr. Scampini:

Q. How did you obtain the cores examined by you for the Cal-Bay?

A. They were furnished to me by—if I may digress a moment.

Q. Yes.

A. At the time of the examination I was em-

(Testimony of Glenn Ferguson.)

ployed by the Union Oil Company. They were furnished to me by Mr. E. S. Pickett, who was a Union Oil Company scout, who had direct [884] connection with the Cal-Bay Corporation.

Q. Was Mr. Pickett scouting the property of the Cal-Bay during the course of the drilling of the well for the benefit of Union Oil Company?

A. It is a habit to scout——

The Court: Just answer “Yes” or “No” to his question.

A. I will say “Yes.”

The Court: He wants to know what he did. There is nothing wrong about scouting.

The Witness: May I say, I would like to just add——

Mr. Scampini: That is all I asked.

Q. Were any of the cores shipped to you by express from the Cal-Bay office in Pittsburg or Antioch?

A. I don't recall.

Q. Were any cores ever delivered to you in person by Mr. Norris?

A. There were—I can't state positively, I don't recall.

Q. Do you recall talking to Mr. Norris at or about the end of October, 1943?

A. Yes.

Q. Did he call at your office?

A. Yes, he did.

Q. Did he call more than once?

A. It seems to me he did; he may have been there twice.

Q. Did Mr. Pickett call by himself?

A. As I recall, he was there with him.

(Testimony of Glenn Ferguson.)

Q. Did not Mr. Norris have with him the Schlumberger or electric log of the Cal Bay well, which is Defendants' Exhibit 28 in evidence, and was not that electric log or Schlumberger [885] examined by you in the presence of Mr. Norris?

A. Well, I have looked at the electric log at various times and I don't recall whether we looked at it at that time, or whether we did not.

Q. Is it not a fact that Mr. Norris had with him the identical electric log, or a photostat of the electric log before you, and he and you discussed at what place on the electric log you should mark the top of the Nortonville shale?

A. I have only a vague recollection of the matter. It seems to me a sample of that kind was discussed.

Q. Did he not ask you, by that I mean did not Mr. Norris ask you, "Mr. Ferguson, based upon your study of the cores, where do you believe we encountered the top of the Nortonville shale in the Cal Bay well?" And did you not say to him, "At 3500 feet?"

A. You are going back a long time to call on one's memory.

Q. To the best of your recollection.

A. To the best of my recollection that is correct.

Q. Did not then Mr. Norris write on the electric log the words, "Top of Nortonville" opposite "3500 feet" in your presence?

A. I don't recall that he did. He may have.

(Testimony of Glenn Ferguson.)

Q. Did not Mr. Norris thereafter and at the same conference, ask you, "Mr. Ferguson, based on your studies of the cores in this well, where do you believe we met the top of the Domengine?" And did you not say to him, "At approximately [886] 3800"—what intervals are these, 20 feet?

A. 10 feet.

Q. "3820 feet?"

A. Well, there, again, you are calling on my memory. We may have discussed some such depth as that. It may have been variable from that. I don't recall, but in some such interval as that.

Q. Did he not thereafter say, "Mr. Ferguson, based upon your studies of these cores, where do you believe we met the top of the Martinez?"

And did you not say to him, "4340 feet," and he marked the top of the Martinez at 4340 feet on the Schlumberger?

A. Now, in my testimony a moment ago I stated that I believed at first there was a portion of this interval that we did have some Martinez. By way of answering your question, may I state this——

Q. Will you please answer the question "Yes" or "No," and then if you desire to explain you are at liberty to so explain.

A. I will say yes, with this reservation, that I cannot remember the exact depth discussed at that time, and further, I will explain this, that in the interim——

Q. What do you mean by "interim?"

A. Well, subsequent to the time that the well

(Testimony of Glenn Ferguson.)

was drilled, and subsequent to the time that the samples were first examined, these samples have been re-worked in a great deal of detail, and I might add that we gain an experience——

The Court: Well, let me interrupt you. All the attorney wants to know is, did you at that time, have you any memory [887] of having made that statement at that time, and if you did do work later on, or did you change your mind about it later on, irrespective of the reasons or anything? Is that right?

The Witness: Yes, that is essentially correct.

Q. (By Mr. Scampini): Did you then further tell Mr. Norris or Mr. Pickett that the Cal Bay well had penetrated cretaceous formation during the year 1943, down to 4394 feet?

A. No. With this exception—Well, I can limit it to that statement, no.

Mr. Scampini: No further questions.

Redirect Examination

By Mr. Bourquin:

Q. Mr. Ferguson, after you talked to Mr. Norris did you make any further examination of samples from the Cal-Bay well? A. Yes.

Q. And you re-worked them, as you put it?

A. Yes.

Q. Did the further examination leave any doubt in your mind as to what formations had been penetrated?

Mr. Scampini: That is objected to as leading and suggestive.

(Testimony of Glenn Ferguson.)

The Court: Of course, he has already testified to that. He said the conclusions he gave today were the results of his reworking of his material at a time subsequent to the time that counsel was referring to. That is right, is it not?

The Witness: That is correct.

The Court: I thought he stated that on direct examination. [888]

Q. (By Mr. Bourquin): What was the depth that you were quite sure the cretaceous had been penetrated, 4,347 feet? A. That is right.

Mr. Scampini: I object to that as leading and suggestive.

The Court: Overruled.

Mr. Bourquin: That is all.

Recross-Examination

Mr. Scampini: I will ask leave to ask a few more questions on the same subject.

Q. When did you re-work these cores?

A. Within the last six months.

Q. At whose request?

A. It was in connection with this—if you mean in connection with this trial——

Q. At whose request?

A. Mr. Blade, I believe it was.

Q. Did you keep all the cores of the Cay-Bay that had been examined by you in 1943 and still had them available six months ago? A. Yes.

Q. Do you keep all cores examined by you?

A. Yes.

(Testimony of Glenn Ferguson.)

Q. What did you do for the purpose of re-working them?

A. Samples were re-examined, and then whenever any question arose as to the form of content a portion of the original material was examined, and in addition to that further samples were obtained from another company having sampled the well shortly after the drilling, and those samples particularly developed, and each one, the former, that is, the species from which it was taken, were obtained from the original set of [889] samples.

Q. Do I understand you to say that new samples of cores from the Cal-Bay well were furnished to you six months ago by another company?

A. That is correct.

Q. What company furnished you those?

A. Standard Oil Company.

Q. Did they tell you at what depth the cores which were furnished to you six months ago from the Standard Oil Company had been obtained?

A. They were labeled and each individual sample was labeled according to depth.

Q. Do you know whether those cores delivered to you by the Standard Oil Company were cores taken from the Cal-Bay well?

A. I have every reason to believe so, yes.

Q. Do you know of your own personal knowledge?

A. I do not.

Mr. Scampini: No further questions.

Mr. Bourquin: That is all.

W. F. BARBAT

called as a witness on behalf of plaintiff; sworn.

The Clerk: Will you state your name?

A. W. F. Barbat.

Direct Examination

By Mr. Bourquin:

Q. What is your business, Mr. Barbat?

A. I am employed by the Standard Oil Company of California.

Q. In what connection?

A. I am presently assistant chief geologist of the company.

Q. Were you so connected with the company during the explorations [890] made on the Cal Bay property by the Cal-Bay Corporation in 1943?

A. In 1943 I was serving in the capacity as senior geologist with residence at Taft, California.

Q. Did you cause core samples to be gathered from the Cal-Bay well during the course of 1943?

A. I did not cause any such samples to be taken.

Q. Were any gathered, to your knowledge?

A. To my knowledge, samples were collected frequently during the course of the drilling of that well by our geologists who were located in that area. Those samples were sent at frequent intervals to the laboratory at Taft over which I had jurisdiction.

Q. Did you receive samples at any time as cores from the Cal-Bay well in the explorations of 1943?

A. That's right, I received——

Mr. Scampini: We object to the evidence because it is based entirely upon hearsay.

(Testimony of W. F. Barbat.)

Mr. Bourquin: It seems to me, your Honor, that what we are offering here is to show the origin of samples gathered in the usual course and custom of a trade or business. That is what I am undertaking to elicit from this witness.

Mr. Scampini: He has no personal knowledge.

The Court: Well, I think counsel's objection is good unless you can show that—if there is any value that you wish to attach to this particular testimony you would have to show the man actually took these cores and delivered them. I [891] don't see how you can avoid that.

Mr. Bourquin: Well, I will say, your Honor, let me put it this way:

Q. Did you deliver samples to Mr. Ferguson for examination? A. Yes.

Mr. Scampini: We will object to that on the ground it is incompetent, irrelevant, and immaterial.

The Court: I will overrule that objection.

Q. (By Mr. Bourquin): Do you know by whom the samples that you delivered to Mr. Ferguson were gathered?

A. Yes. My record shows that the samples were gathered by——

Mr. Scampini: The question is based upon hearsay. It is not what the record shows. I move to strike out the answer as not responsive.

The Court: Yes. I will strike it out.

Q. (By Mr. Bourquin): Do you know by whom they were gathered?

A. Only by the record.

(Testimony of W. F. Barbat.)

Mr. Scampini: I move to strike out any testimony on the part of the witness as being based entirely upon hearsay.

The Witness: Correspondence. May be I will put it that way.

Mr. Scampini: Same objection.

Q. (By Mr. Bourquin): Was the record kept under your supervision in the course of your business with the company at any time?

Mr. Scampini: I object to that as incompetent, irrelevant, and immaterial. [892]

The Court: I am inclined to think the objection is good, Mr. Bourquin. I don't see how you can prove by some record as to whether or not a core was taken from the Cal-Bay well. If it is of any importance in this case——

Mr. Bourquin: Well, I thought, your Honor, to prove the course of business might suffice it.

(Further discussion.)

Mr. Bourquin: Your Honor, I will have no further questions of Mr. Barbat. Thank you, Mr. Barbat.

(Witness excused.)

H. K. ARMSTRONG

called as a witness on behalf of plaintiff; sworn.

The Clerk: Will you state your name to the court and jury?

A. H. K. Armstrong.

(Testimony of H. K. Armstrong.)

Direct Examination

By Mr. Bourquin:

Q. Mr. Armstrong, what is your business or profession?

A. I am a consulting geologist and engineer.

Q. Will you just state for us what has been your training and experience in that line?

A. I graduated from the University of Minnesota——

The Court: Is this a valuation man?

Mr. Bourquin: Yes.

The Witness: I graduated from the University of Minnesota in 1918, with the degree of Engineer in Mining. After serving [893] in the Navy I returned to the University and took some graduate work in geology. Following that I worked at various mines as a mining geologist in western United States and South America, and returned to the United States in 1923. I had a year's graduate work at the University of California, Berkeley, in geology. Following that I was employed by the Shell Company for somewhat over a year. Then with the Superior Oil Company for about three years. Then the Prairie Oil & Gas Company two years, and in 1930 I went into independent consulting work, specializing in petroleum geology and engineering, and have been engaged in that with offices in Los Angeles since that time.

(Testimony of H. K. Armstrong.)

Q. Will you state for whom, some of the concerns for whom you have done work in the course of your work as consulting geologist and petroleum engineer?

A. The Dominguez Oil Field Company, Standard Oil Company, General Petroleum Company, George F. Getty Company, Pacific Western Company, Richfield Oil Company, Reserve Oil & Gas Company. Many other companies, small and large; I don't recall all of them now.

Q. Have you, in your experience, Mr. Armstrong, appraised oil and gas rights for purposes of purchase and sale?

A. Yes, I have.

Q. Have you, in your experience, participated in capacities in explorations for oil and gas?

A. Yes.

Q. Have you any familiarity with the subject in the field of Northern California?

A. Yes.

Q. Let me ask you this: You have been here during the progress of the trial?

A. Yes.

Q. Have you in your experience seen and studied the experiences of those engaged in the drilling for oil and gas?

A. Yes.

Q. Have you seen and encountered blowouts in such explorations?

A. Yes.

Q. Of what degree, can you tell us?

A. Small blowouts usually, small showings of gas; some enough so that the oil flowed.

Q. Have you made a study and investigation of the property that is subject to this action, the Cal Bay property and the leases at the location?

A. Yes, sir.

(Testimony of H. K. Armstrong.)

Q. Have you been on the property, Mr. Armstrong? A. Yes.

Q. When were you first on that property in the course of this proceeding or the exploration?

A. I do not recall exactly. I visited the well in the course of its drilling at least twice; once in the fall of 1944, I recall particularly, and some time prior to that.

Q. Have you made a study of the property in the immediate area surrounding?

A. Yes. I am particularly familiar with the Rio Vista field, where I have been employed by Peter Cook, gas operator.

Q. Is this Cal Bay property, as was stated here, surrounded [895] by producing gas fields?

A. No.

Q. Have you mapped the Cal Bay area at the outlying areas of northern California in the field of oil and gas exploration?

A. Yes, I have prepared a map.

Q. Have you it with you.

A. Yes, I have.

Mr. Scampini: May we see it, please?

(A map was handed to Mr. Scampini.)

Mr. Scampini: That seems to be fairly correct.

Mr. Bourquin: If there is no objection, your Honor, we offer the map in evidence, so it may be put up and have the witness explain it.

The Court: It may be admitted.

(Thereupon the map in question was received in evidence and marked Plaintiff's Exhibit Y.)

(Testimony of H. K. Armstrong.)

Q. (By Mr. Bourquin): Mr. Armstrong, will you take the pointer and tell us what your map depicts, please?

A. The map is an outline map showing the land divisions between a point just immediately north of Madera and extending some twenty miles north of Sacramento, and extending between the Sierra Nevada on the east and the Bay district on the west.

Q. Is this a map that you made yourself or is it some published map that you colored?

A. No, this is a map I prepared myself a number of years ago to keep track of gas developments in the area. [896]

Q. Can you identify for us on your map the location of this Cal Bay Faria property?

A. There is an area outlined in black in the southwest quadrant of the map, the boundaries of which coincide with the map submitted by Dr. Taliaferro.

Q. That is Plaintiff's Exhibit W, is that right?

A. That is right.

Q. In other words, you have outlined on this diagram the area embraced in Dr. Taliaferro's map, Plaintiff's Exhibit W, at the place I have indicated?

A. That is right. It is outlined in black.

Q. Can you with that show us the location of the Cal Bay well?

A. The Cal Bay well is shown by a small circle near the northwesterly portion of that area.

Q. The other circle shown in that area represents what?

(Testimony of H. K. Armstrong.)

A. That is the Standard Kellar No. 1.

Q. Does your diagram also show, will you tell us, the producing oil and gas fields within the area that it embraces?

A. The map shows by color, either red or green, the producing gas fields. There are no oil fields in this area.

Q. Will you point out to us by color what fields it shows us?

A. I might say the red indicates fields which produce from the formations of the eocene age and the green the fields which produce from formations of the Cretaceous age, and beginning at the top, the field labelled Vernalis is a small field producing from Cretaceous. The next further to the [897] northwest is the Tracy field, also productive in the Cretaceous formation. Then somewhat farther north, near the city of Stockton and west of it, there is another field known as the McDonald Island field, which produces from the eocene; and then near the town of Lodi two small fields, both producing from formations of the eocene age; westerly of Lodi and near the town of Thornton, the Thornton gas field produces from formations of the eocene age.

Then, more or less in the center of the map, the largest area, colored red, is indicated the Rio Vista field, which is the largest of them all by a very great margin, and it is also producing from the formations in the eocene age.

(Testimony of H. K. Armstrong.)

Immediately north of Rio Vista is the Cache field, which produces from formations of the eocene age. Northerly farther, near the town of Dixon, is a field known by that name, producing from formations of the eocene age.

At the place labelled on the map Fairfield, not very far away from Davis Junction, there is a field known as Fairfield or Fairfield Knolls, which produces from formations of the eocene age.

South from there is an unnamed discovery, a rather recent one, also producing from eocene; and north from there an unnamed discovery of recent date producing from the eocene.

About six miles west of Rio Vista, Kirby Hills field is indicated. That produces likewise from formations of the [898] eocene age.

Southwest of that three or four miles is the Suisun field, and south of Kirby three or four miles is the Honker gas field, all of which produce from formations of the eocene age.

Q. What do the circles that you show on your map that are scattered over the extent of it represent?

A. The small circle enclosed by the larger circle indicates the location of a well drilled exploring for gas which has failed to find a commercial discovery, known as a dry hole. It is so labelled on the legend of the map.

Q. Can you tell us, so we will have it for our record, does your map show, or are there any producing fields south or west of the Cal Bay location?

A. There are none.

(Testimony of H. K. Armstrong.)

Q. By the way, for purposes of orienting ourselves now, does your map show the Potrero Hills location we have talked about here?

A. Yes, I am pointing to an area outlined with a black line which says, "Potrero Hills". That is a prominent topographic formation found out in the middle of the mud flats of the Sacramento River.

Q. Each one of these circles, the larger one enclosing the smaller, represents an exploration that was made and failed to find a commercial deposit?

A. Yes, that is correct, as far as—the map is not up to date. There are a good many more dry holes than shown. I think the map is approximately up to the end of 1945. [899]

Q. Approximately to the end of 1945, to that extent it shows producing fields and it shows the dry holes, is that correct?

A. That is right.

Q. Will you take the stand again, please? Have you seen and examined the defendants' log kept on the exploration in the Cal Bay well?

A. Yes, sir.

Q. Have you seen and examined the mud reports that were made and returned here by the Baroid people?

A. Yes.

Q. And the Johnston formation test reports?

A. Yes.

Q. Are you familiar with the prices at which acreage for the exploration of gas and oil has been bought and sold in northern California?

Mr. Scampini: May it please the Court, we object to the question on the ground that it is asking

(Testimony of H. K. Armstrong.)

for something that is irrelevant to the issue. We are not asking for acreage; we are asking for the value of leasehold estates as the value of acreage would not be determinative of the value of leasehold estates or royalty interests.

The Court: It would be the greater including the lesser, would it not?

Mr. Scampini: I do not know of any sales of acreage. We are talking of the sale and purchase of leases on acreage.

Mr. Bourquin: They split it up. They are talking about all the mineral fee in these properties. We propose to prove the value of the mineral fee, although because it has been [900] the style of the defendants' examination, we will allocate it between the lease and the fee.

The Court: I will overrule the objection.

Q. (By Mr. Bourquin): Are you familiar with it? A. Yes, I am.

Q. Have you made a study and an examination of it additionally for the purposes of appraising this matter? A. Yes.

Q. While the subject occurs to me, did you hear the valuation witness produced by the defendants, Mr. Wents, and the other gentleman, refer to three or four examples of properties in southern California which they used to support their claim of value here? A. Yes.

Q. Did you identify them? Do you know the location of those properties?

A. Yes, I am quite familiar with them.

(Testimony of H. K. Armstrong.)

Q. Can you tell us, are any of them proved or unproved acreages or places?

A. They are all located in or near producing oil land.

Q. Mr. Armstrong, I want to ask you what in your opinion was the market value as of January 15, 1945—before I come to that, your Honor, we have a diagram that will be of assistance in presenting this matter. I would like to put it in evidence.

The Court: I think maybe we had better defer this until after the noon recess. We will take the noon recess at this time, ladies and gentlemen. The Court will reconvene at two [901] o'clock. I will ask you to bear in mind as usual the admonition of the Court.

(Thereupon a recess was taken until two o'clock p.m.)

Afternoon Session, February 5, 1947, 2 P. M.

The Clerk: United States of America vs. Certain Land in Contra Costa County.

Mr. Bourquin: Shall I proceed?

The Court: Yes.

H. K. ARMSTRONG

recalled; previously sworn.

Direct Examination

(Resumed)

By Mr. Bourquin:

Q. Mr. Armstrong, before leaving the map that you prepared there do you know the experience of

(Testimony of H. K. Armstrong.)

the various explorations shown on the map that you have made and produced here in the way of showings encountered and the prices paid for leasing rights in those properties?

A. A good many of them, yes.

Q. Would you take the pointer and give us the benefit of what you learned in that experience?

Mr. Scampini: May it please the Court, we object to the question on the ground it is not a matter of, or not a subject of expert testimony as to what the experience may be in connection with some of the fields discovered, and thereafter what happened to them. It has not any bearing on the value.

The Court: I think what counsel is doing is to show the information the witness acquired upon which to base his valuation. [902]

Mr. Bourquin: It is, your Honor.

The Court: I think that is a perfectly proper field of inquiry.

The Witness: In the vicinity of the Faria well and further to the southeast the Standard Oil Company took a lease on the Keller Ranch, consisting of about 1600 acres, for which it paid, I believe \$2500; that is a dollar and a half an acre. On that they drilled a dry hole, known as Keller No. 1. This lease on the ranch covered what seemed to be the most favorable portion of the area involved, and it was a single lease, and was better drilling operations.

In other places, such as the Sites area, Sites is a town not far from Willows, west of Willows,

(Testimony of H. K. Armstrong.)

a few miles west in the foothills. There the Continental Oil Company drilled a well which blew out something like 20,000,000 cubic feet, and they went to salt water, and cratered; the gas and mud and water came out for 2000 feet all around the well. At that well you can still see gas and water bubbling up. That land belonged to the Peterson family, the land upon which the well is located, and the adjacent land, and Peterson told me they would lease that land for a dollar an acre now.

Mr. Scampini: I move to strike out the statement of the witness as to what Mr. Peterson told him, and move to strike out the entire testimony of the witness on the ground that [903] it is hearsay; what he has been told by a landowner by way of a bonus for obtaining the rights on the property. I think it could not have any bearing on the market value of a leasehold estate in the course of barter and sale between persons in order to obtain a lease. That is not a criterion of the value of the land on which the exploration and drilling——

The Court: Isn't it some argument of the value of the lease?

Mr. Scampini: It is evidence only as to bonus paid by the company, in addition to the royalty reserved by the lessor for the purpose of obtaining that lease.

The Court: I will overrule the objection.

Q. (By Mr. Bourquin): You say on that property, Mr. Armstrong, that after the drilling of the well that blew out the property was leased for a dollar an acre.

(Testimony of H. K. Armstrong.)

Mr. Scampini: May it please the Court, there was no such statement made as that. I object to the form of the question as leading and suggestive.

The Court: I understood him to say the owner informed him they received a dollar an acre.

Mr. Scampini: Plus a royalty, your Honor. Let's find out what the value of the royalty is.

The Court: I don't think counsel can do it all in one question. Overrule the objection.

The Witness: The Petersons received a one-eighth royalty. [904] The lease provided they would receive one-eighth royalty of anything produced there.

Further south and within the area in this map there is an area, Nigger Heaven Dome, and that was something that was very prominent on the west side of the valley, not far west of Woodland. In approximately 1931 the Getty Oil Company commenced drilling a well there and at 2000 feet in depth experienced a great blow-out and gas and mud cratered up about the well and flowed on the surface of the ground for maybe a thousand feet on all sides.

Mr. Scampini: Will it be deemed part of the record that we except to all this line of testimony, so we won't have to be getting up and repeatedly objecting?

The Court: If you will make clear to me what you have in mind, I don't quite follow you as to the materiality. What other properties in the neigh-

(Testimony of H. K. Armstrong.)

borhood have been sold for is always a proper subject in condemnation, as long as it is proximate in point of time and location.

Mr. Scampini: (After argument): In order the record will be clear, we will object to the testimony given in the answer by the witness, and move to strike it out on the ground he is not dealing in comparable properties, on the ground he is basing his replies clearly on hearsay testimony; on the ground he was not present, knows nothing of the facts personally, and what has happened to the fields after coming in, or otherwise, [905] because they were subsequently abandoned, has no bearing on the question of value of a leasehold interest of Cal Bay Corporation, or Joseph Faria, at the time of the condemnation by the Government.

The Court: Well, on the ground comparable transactions involving mineral rights in this general area are proper to be presented in connection with testimony as to value, I will overrule the objection.

Mr. Bourquin: Will you proceed?

A. Following the blow-out——

Mr. Scampini: We ask the examination of this witness proceed by question and answer.

Mr. Bourquin: I asked him if he will detail for us what information he has pertaining to the explorations in the area shown on the map, with reference to showings encountered in the explorations, and the prices paid.

The Court: I think that is a fair question. I will overrule the objection. I don't know how else

(Testimony of H. K. Armstrong.)

we could ascertain it. We cannot shut out the testimony that gives information to the jury as to what took place in land around here. How can we do that? Overrule the objection.

The Witness: Following this blow-out that I refer to at Nigger Heaven Dome, Leebo No. 1 well, the Getty Oil Company ceased their activities there, and the drilling of the well was taken over by another company. I was engaged by the [906] Reserve Oil & Gas Company, who had leases in those areas, to watch the progress of that well, and advise them regarding the procedure. The well was during the following year, or year and a half, drilled to a depth of approximately 6700 feet. During that drilling they encountered a good many shows of gas, scum of oil, in many instances, and from time to time the pressure was such that mud would flow from the well and simulate a blow-out; not as great as the initial one at 2000 feet, but expressed quite a pressure. When the well was shut in they used a pressure as I recall, 1700 pounds on the casing, to make the casing. When the valve was opened up the pressure was built up and there was no volume of gas recorded. The well was abandoned and later the Standard Oil Company drilled a well nearby, which was also a dry hole, and it was abandoned.

After the completion of the Leebo well and the drilling of another well by Standard Oil Company, some of the Reserve Oil & Gas Company's holdings were abandoned at a dollar an acre, with royalty $\frac{1}{8}$.

Q. Including the well?

(Testimony of H. K. Armstrong.)

Mr. Scampini: We object to that as leading and suggestive.

The Court: Overruled.

The Witness: The well was—the Northern Counties Oil & Gas Company I think, was the name; the name of the company, the lease I referred to sold by the Reserve Oil & Gas Company, they were nearer this well, and in the top of the structure.[907]

In the area between Rio Vista and Kirby Hills there was a wildcat play. That line played out and I might say my experience that started in 1933 developing and drilling the Leebo well, has continued in this area at irregular intervals.

Q. What do you mean by “play”?

A. I mean a company decides to lease some of the land and try some exploration; other companies getting word of that company's activities go in and lease land on their own right. The idea is if the Standard Oil Company were to drill a well there, as they did, they would have adjacent acreage, and if the well made a discovery the cost to them would only be the land cost, no well cost. It is play, it is not an investment, it is entirely speculative.

At that time leases in that area which sold initially for a dollar an acre, finally got up to \$5 an acre, then \$10 an acre. Then I believe there was one 60-acre piece which sold for \$30 an acre. One landowner told me he got \$75 an acre. I think he was exaggerating it to his neighbor, because the man that leased paid only \$30 an acre for it.

(Testimony of H. K. Armstrong.)

That play having been completed, and all the leases having been obtained that could be obtained in there, the Standard Oil Company then drilled their Montezuma Community No. 1, which was a dry hole.

About that same time that the well was drilled in there by a man by the name of Oberholtz, I happened to know the history [908] on that because I was engineer. The leases were obtained from Mr. Robert Landi for a dollar an acre.

Earlier than this, and on the east side of the valley, in the vicinity of Lodi and Barton, there was another lease play. One of the companies, Amerada, in conjunction with the Bank Line Oil Company and Honolulu Oil Company, had been exploring that area by geophysical means. They took leases there in competition with each other, and the price which started at a dollar an acre was soon up to \$10 an acre. There were some even at \$20 an acre. The wells were drilled. They were found to be dry holes, and they were abandoned. The field turned out to be very small. Subsequent inquiry about the development occurring at Thornton and around there, the activities were limited to a very small acreage and leases offered at \$5 an acre.

Mr. Scampini: I move to strike that out as not responsive.

The Court: Overruled.

The Witness: Across the river from the valley area near the town of Fairfield there is a structure,

(Testimony of H. K. Armstrong.)

well known structure known as the Maka. That is on the map. It has been mapped by many geologists. It is very well exposed. There is a fault in one side of it. There is a volume of gas that comes up through the stream that crosses the roof of the structure. The leases covering that structure were held by the Western Gulf Oil Company for ten years, during which time they paid \$1 an acre rental, and following their quitclaiming of that without drilling the Union Oil Company held it for about, I think, five [909] years for something like a dollar an acre a year, and following that I was engaged, myself, to make a geological survey of it and make a report on it to an independent broker, who then went to the landowners and obtained leases from them for nothing. Since that time he has failed to dispose of the leases, although he is offering them at a dollar and a quarter an acre.

Q. What was the experience in Potrero Hills?

A. Potrero Hills is a prominent field over in the midst of the mud flats south of Fairfield, and north of the Faria property. It was first explored, I think, in about 1919 by the Honolulu Oil Company. They drilled a well there, I think, and about 1900 feet, and it blew out and they subsequently abandoned, and the Richfield Oil Company, in about 1929 or '30 secured leases on the land and drilled a number of wells, drilled three wells, I believe. I did not get the details of the particular wells, but it seems to me it is sufficient after having

(Testimony of H. K. Armstrong.)

gotten maybe 25,000,000 feet a day they finally, after drilling three wells, quitclaimed on the lease, and I believe the land stands under lease now.

When I have been telling you about Sites, Nigger Heaven, and Potrero, they are all cretaceous structures, Maka is a cretaceous structure. The area between Kirby Hills and Rio Vista has a cover of alluvium, and the cretaceous is buried by a great thickness of cocene.

At the end of Potrero Hills last year many leases were [910] taken by a man by the name of Woodward, and then the National Company drilled a well. They drilled about 2000 feet. I think when they were 1700 feet it blew out. I visited the well shortly after and observed gas and mud and salt water, and I conversed with the people there as to what had happened. They showed me the Schlumberger and asked me about it. That has been abandoned now; Woodward bought the leases there for a dollar and a half an acre.

Q. (By Mr. Bourquin): Let me ask you this, in addition to the consulting work in your experience, Mr. Armstrong, have you done or had charge of any development in the areas there?

A. Yes. I have been employed in the last six or seven years by Peter Cook, Jr., and we had operations in Rio Vista and the Cache area. I had charge of the drilling of a number of wells, five or six, for him, and I have also had charge of drilling of four or five wildcat wells that I did not develop, which resulted in dry holes. I have also

(Testimony of H. K. Armstrong.)

been engaged with others, one of them Leeb-McNee, and the second well which I referred to before as the Oberholtzer, I was geologist and engineer with them. The last two wells I mentioned lie in the area between Rio Vista and Potrero Hills.

Mr. Bourquin: It would facilitate presentation of the appraisals, I think, if we used this map here. I will show it to counsel. We have here, your Honor, for the purpose of presenting the witness' appraisals an appraisal map here that [911] I would like to offer for that purpose, and have it marked so it can be used. There is a legend there, Mr. Scampini, I did not show it to you, but I think it has reference merely to the different ownerships.

Mr. Scampini: Very well; subject to check as to correctness of the legend, we have no objection.

Mr. Bourquin: We will offer it in evidence.

The Court: Very well.

(The map was marked Plaintiff's Exhibit Z.)

Mr. Scampini: Will it be stipulated, counsel, that the large section of colored light blue represents all of the land taken by the Navy pursuant to this action, comprising all of the parcels involved in the 5400 some odd acres of land, and the only parts we are interested in are the properties of the Cal Bay and of Joseph Faria, Jr.

Mr. Bourquin: I believe that is right. The adjacent area, which is colored light blue, is the total fifty-four hundred some odd acres. With respect to what is colored green and yellow, that

(Testimony of H. K. Armstrong.)

represents the portion taken from the defendants. I don't think—it does not have the piece of Joseph Chavez.

Mr. Scampini: For the purpose of the record at this time we will abandon any claim as to the value of the Chavez piece.

Mr. Bourquin: I understand now that Mr. Chavez is satisfied with the compensation paid him by the Government for his [912] property taken, and makes no claim therefor.

Mr. Scampini: Mr. Chavez is not a party to this suit.

Mr. Bourquin: That's right. The piece was not included, so we should understand Mr. Chavez is not making a claim.

Mr. Scampini: No. Joseph Faria is not making any claim as to his lease in respect to the Chavez piece.

Mr. Bourquin: All right.

Mr. Scampini: That is Parcel 71, your Honor. We are only interested with Parcel 57, 58, 59, 64 and the Alvernaz piece, which appears at the north-east corner of the Cal Bay property.

Q. (By Mr. Bourquin): Mr. Armstrong, the diagram placed last in evidence, is it correct to say that the Cal Bay Lease, including both the portion taken by the Government and the balance of the lease outside of the Arsenal is shown in the area shaded and outlined in green? A. I believe so.

Q. And the shaded yellow lines include the portion of that taken and the balance outside of that

(Testimony of H. K. Armstrong.)

Arsenal not taken is shown in the area shaded yellow and outlined in yellow? A. Correct.

Q. Will you tell us what, in your opinion, was the fair market value as of January 15, 1945, of the whole total mineral rights inclusive of both lease and royalty in the 208.83 acres in parcel 59; that was the property of Mary Faria, and covered by the Cal Bay lease. A. \$1470. [913]

Q. \$1470? A. Right.

Q. How much an acre, Mr. Armstrong?

A. \$7 an acre.

Q. \$7 per acre. Can you allocate that as between the market value of that lease and the market value of the royalty reserved under the said lease?

A. Yes. In my opinion, the royalty or lessor's interest is worth \$1050.

Q. \$1050? A. Or \$5 per acre.

Q. Or \$5 per acre.

A. The lessee's interest was worth \$420, or \$2 an acre.

Q. Now, going next to Parcel 58, which is shown in the green, and lies inside of that portion of 59 taken, consisting of five acres, I will ask you what, in your opinion, was the fair market value of the total mineral rights as of January 15, 1945, of that parcel which was the property of whom——

Mr. Scampini: Edward Faria.

Mr. Bourquin: Edward Faria, and subject to the Cal Bay Lease.

A. In my opinion that was worth \$35.

Q. How much? A. \$35: \$7 an acre.

(Testimony of H. K. Armstrong.)

Q. What, in your opinion, is the allocation between the market value of the lease interest and the royalty interest in that property?

A. Royalty interest of \$25; lessee's interest \$10.

Q. Going to Parcel No. 57, which was the property of Mae Roche, consisting of something less than approximately 5 acres of property, as shown on the diagram inside the Faria lease [914] as Parcel 57, what, in your opinion, was the fair market value of the total mineral rights in that parcel of land as of January 15, 1945?

A. \$35.

Q. \$35. What, in your opinion, are the respective market values of the lessee's interest and royalty interest in that parcel?

A. Lessee's interest \$10; lessor's interest, \$25.

Q. In parcel 59, that was covered by the Joseph Faria lease and consisted of 63.91 acres included in the taking of the Government, I will ask you what, in your opinion, was the fair market value of the total mineral interest in that acreage subject to Joseph Faria's lease as of July 24, 1944? Will you wait just a minute, please, before you answer? Can you answer that, Mr. Armstrong?

A. \$640.

Q. \$640. What, in your opinion, are the respective market values therein of the lessee's interest of Joseph Faria, and the royalty interest reserved to Mary Faria?

A. Each \$320, or \$5 per acre.

Q. Each \$320. On that, of course, the total

(Testimony of H. K. Armstrong.)

mineral interest runs out at approximately \$10 an acre, does it? A. Approximately.

Q. What, in your opinion, was the fair market value of the .65 acres contained in Parcel 64, and taken by the Government, what is the value, the total mineral interest value of that fraction of an acre as of July 24, 1944? A. \$10.

Q. \$10. Now, in your opinion, would the market value [915] of the lease and the royalty in that fraction of an acre be allocated?

A. Divided equally, \$5 to each.

Q. What, in your opinion, was the fair market value of the total mineral interest—that is the Joe Chavez piece I was coming to, and that has been abandoned.

Mr. Armstrong, will you just state for us the reasons and the basis for the conclusions of market value which you have stated?

A. The basis of my opinion is a comparison between the characteristics of the subject land and other gas lands in Central and Northern California, the prices for which they have been traded, in conjunction with the physical facts which can be learned from studies of the log, the physical log and the history of the field at the Division of Gas and Oil, the daily log of the oil, the Schlumberger record, the mud engineer's record, the Johnston formation testor records. [916]

Some knowledge of the geology as it exists on the surface; inspection of some of the cores of the well at the well that I made personally; and evi-

(Testimony of H. K. Armstrong.)

dence derived from the study of similar records from many other exploratory wells nearby, such as the Kellar well, and lying some distance away, such as the wells at Rio Vista, Honker Bay, Kirby Hills and Suisun.

Q. Let me ask you this: Did the presence of this well add anything to the value of the mineral fee of the 208.83 acres of land in Parcel 59 taken, in your opinion? A. No.

Q. Will you tell us why, please?

A. The well was in bad mechanical condition, for one thing. There was a fish in the straight hole and that fish obstructed the casing that had been set in the hole. A second hole had been drilled through a window, and that hole was obstructed with another fish. The casing necessitated any further drilling to be in a small hole, a six and a quarter inch hole, as the side track well was, which is an undesirable mechanical condition, and then perhaps more importantly, the well had penetrated all of the geologic formation beds which have a history of producing commercial gas and had been tested exhaustively in the eocene beds and found no commercial production.

The showings found subsequently in the Cretaceous formation below, in the slanting hole, were to my mind no more [917] significant of commercial discovery than many of these blowouts that I have referred to before now. It was a showing of gas, and that is a common thing to encounter—salt water with it in all probability. That is a common

(Testimony of H. K. Armstrong.)

thing to encounter. The history of the well was definitely negative. No discovery seems to have been made of any importance, in my opinion.

Q. Based upon your experience, would a purchaser of the lease in that property who wanted to take a further look utilize that well in the condition it was on January 15, 1945? A. No.

Q. Why?

A. In my opinion, to a prudent operator, having had the experience of the industry, an old junked hole is a liability. He had better start another one from the surface and have the mechanical conditions right.

Q. I take it in giving us your view with respect to the presence and condition of the well, that you are not including in this taking the equipment, the rig or any of the equipment that could be and, of course, was removed? A. No, sir.

Q. Let me ask you these questions on severance, Mr. Armstrong, if you please: Will you tell us in your opinion to what extent, if any, was the property under the Cal Bay lease in the taking and consisting of the 158 acres of Mary Faria, depreciated in market value by the taking of the Government of the property that was taken?

A. In my opinion it suffered [918] no damage.

Q. Will you tell us your reason for that opinion?

A. There is a substantial amount of acreage that is outlined in green on this exhibit which lay outside the Government taking.

Q. That is the one outlined in green, but not shaded in, is that right?

(Testimony of H. K. Armstrong.)

A. Not solid green, but outlined in green.

Q. Yes.

A. Which would give a lessee abundant opportunity to locate wells and drill them to whatever horizon he saw fit to do it. He would have possibly some advantage in that the other land was in the hands of the Government and he would not expect very keen competition.

Q. What is your opinion with respect to that question as referred to the 310 acres of Alvernaz, which was included in the Cal Bay lease and was not included in the Government taking, and showing in that oblong shape at the northerly limits of the Cal Bay lease? Was that property depreciated in market value by the taking of the Government? A. I think not, for the same reasons.

Q. To what extent, if any, was the property covered by the Joseph Faria lease and consisting of the 9.6 acres of Mary Faria and the 227.93 acres of Geraldine Faria which were not included in the taking depreciated in market value by the Government taking?

A. In my opinion, they did not depreciate in value. [919]

Q. And for any other reason, or the same reason that you mentioned? A. The same reason.

Q. To what extent, may I ask, was the royalty interest of Mary Faria in the 158 acres of her property covered by the Cal Bay lease that was not taken depreciated in value by the taking of the Government? A. I think not.

(Testimony of H. K. Armstrong.)

Q. No depreciation?

A. No depreciation in value occurred.

Q. What about the royalty interest in the 9.6 acres covered by the Joseph Faria lease, but not included in the taking? Did that in your opinion suffer any depreciation in market value?

A. No, in my opinion it was not adversely affected.

Mr. Bourquin: You may cross-examine.

Cross-Examination

By Mr. Scampini:

Q. Mr. Armstrong, how many dry holes did you drill for Peter Cook in the Rio Vista area outlined by you on your map? A. None.

Q. Calling your attention to the outlines of the Rio Vista field that I am now tracing, can you state how many dry holes have been drilled within the confines of the red?

A. I am not quite certain, but I think there was one. It may be that that was subsequently made into a producer.

Q. Isn't it a fact that there are more than five dry holes right within the confines of the red—and I will point them [920] out to you? What is that well that I am now indicating?

A. Well, I can't tell from this scale map? My guess is it is one of the Alvarado holes.

Q. A dry hole or producer?

A. A dry hole in the lower zone.

(Testimony of H. K. Armstrong.)

Q. How about the well I am now indicating?

A. I do not know which well that is.

Q. Does that appear to be a dry hole on the map?
A. I can't say. I don't know.

Q. How about the well I am now indicating?

A. The same. I don't know.

Q. How about the well I am now indicating?

A. I don't know which one you are indicating.

Q. Right here (indicating).

A. I don't know that hole.

Q. How many more such similar wells within the confines of that red boundary would you locate by looking at that map?

A. There are many of them.

Q. Many of them?

A. Many wells which are dry in the lower zone produce in the upper zone.

Q. There are many dry holes which are surrounded by producing wells, are there not?

A. Not so far as I know in that field.

Q. It happens quite often in many fields, doesn't it?

A. It is a rare thing. It can happen, but it is rare.

Q. I notice here on the map prepared by you that you have circled in black the well drilled by Standard Oil on Mulligan [921] Hill, known in this case as the Kellar well, and I take it that that means it is a dry hole, is that right?

A. Yes, the symbol for a dry hole is a small circle. Some of them have been emphasized by a heavy large circle.

(Testimony of H. K. Armstrong.)

Q. In respect to the Cal Bay well, is that symbol that you have there also indicative of a dry hole?

A. Yes.

Q. So that your entire valuation that you have given is based upon your assertion that the Cal Bay well resulted in a dry hole? A. That is right.

Q. And if it were a fact that it was a producing well at the zones penetrated in November of 1944, would those values which you have given still be the same? A. Certainly not.

Q. How much higher would they be per acre on Parcel 69?

A. How much better was the well under your question, may I ask?

Q. I beg your pardon?

A. I ask you how much higher the value that you have given——

The Court: The witness says it would depend upon how much better the well was.

Mr. Scampini: Very well. I didn't understand.

Q. In the course of your studies for the forming of your opinion that this is a dry well, the Cal Bay well, did you rely entirely upon the findings of Professor Taliaferro? A. Oh, no.

Q. What other findings or facts did you have before you that [922] led you to the conclusion that it was a dry hole?

A. The log record, daily log sheets, the summary log, the testimony that I heard here in this courtroom.

Q. Where did you see the log record of the well?

(Testimony of H. K. Armstrong.)

A. I think I was supplied with a copy of that by the Department of Justice.

Q. Did you see on the last page of the log of the well a note reading as follows:

“This well has undoubtedly made a gas and oil discovery, but the completion of the well as a commercial producer could not be effected, as over one-half of the leased lands of Cal Bay Corporation, including the well, was condemned by the United States Government for use of the Navy as part of the lands to be incorporated in the Port Chicago ammunition storage area in accordance with previous notices.”

Did you see that notation on the log?

A. Yes, sir.

The Court: Just a moment, Counsel. Is that something that the California Oil and Gas people put on there?

Mr. Scampini: No, that is something that appears on the log of the Cal Bay well.

The Court: You mean something that the Cal Bay people put on there?

Mr. Scampini: Yes. That is the log he examined.

Q. Did you pay no attention to that note on the log of the well? [923]

Mr. Bourquin: That is the log summary.

The Court: Obviously he did not, because he said it was not worth anything.

Mr. Scampini: I am approaching the reasons as to why he did not.

(Testimony of H. K. Armstrong.)

Q. Did you pay no attention to the note on the log of the well? A. I wouldn't say——

Mr. Bourquin: I object to that, your Honor, as argumentative and assuming something not in evidence, because that is not the log. That is the summary that Mr. Faria said Mr. Wents wrote and he signed it.

The Court: I think it is an argumentative question. You are asking the witness whether he agreed with the conclusion the Cal Bay people came to and he says he does not. He told you that already.

Q. (By Mr. Scampini): Did you examine the log record of the well for November 29, 1944?

A. For that day?

Q. Yes. A. Yes, I did.

Q. You gave it no consideration in arriving at your value, is that right?

A. On the contrary, I scrutinized that and the events leading up to the events of that day very carefully to arrive at the opinion I expressed.

Q. Did you arrive at the opinion that the well was a non-producer? A. Definitely.

Q. By reason of what you saw on the log record?

A. By reason [924] of the fact that it does not produce.

Q. Do you know whether or not the lower formations were ever tested to ascertain whether or not they would produce?

A. No, I do not believe they were.

Q. Do you know why they were not tested?

A. No. That is a mystery to me, why the tests were not made.

(Testimony of H. K. Armstrong.)

Q. Is your valuation based on the assumption that the lower formations penetrated in November of 1944 were found to be non-productive?

A. I can't answer that question yes or no. Is that what you wish me to do?

Q. I wish you would and then you may explain if you wish.

A. May I have that question again?

(Question read.)

A. No.

Q. What is it based on?

A. And then if I may explain——

Q. Go ahead.

A. I noted showings that the log records and the various witness told us about, and it appeared to me that there was an uncertainty. The thing was still speculative, and I so regarded it in arriving at my estimate of the market value of the property.

Q. Did you for the purpose of determining the probability of discovery in the Cal Bay well see fit to obtain the information collected by Byron Norris in the course of drilling the well? A. Yes.

Q. Did you discuss it with Mr. Norris?

A. No, I did not. [925]

Q. What information supplied to you by Mr. Norris or from Mr. Norris did you consider?

A. I read his various reports. I was a little bit surprised in the beginning that he made some of the statements he did, but he later corrected them, and I finally arrived at the opinion, after perusing them carefully and studying his map, that there was nothing very useful there to me.

(Testimony of H. K. Armstrong.)

Q. Do you disagree with the opinion of Mr. Norris that the well made a commercial discovery in the Martinez sand at the 4,975 foot level?

A. Yes.

Q. And your valuation is predicated upon your opinion as to whether or not a commercial discovery was made in the sand, is that right?

A. No, sir.

Q. Upon what other factors is it predicated?

A. It is based upon my estimate of what the industry would appraise a situation of this sort at, what a buyer and a seller would consider when they are talking a trade. Personally I would not recommend that to anybody. These prices I have quoted are not my estimate of the value I would pay for it or that I would recommend a client pay for it. They are merely my estimate of what in the market and in the selling of oil leases and royalties these would bring between a willing buyer and a willing seller.

Q. What information would this supposed willing buyer have to have to have before he could arrive at an opinion as to what [926] he would pay for the leasehold estate of Cal Bay Corporation?

A. He should have the facts made available to him.

Q. Were all the facts available to you before you formed the opinion which you reached?

A. All the facts I found were available to me.

Q. Did you discuss it with any of the drillers who operated or drilled the well?

A. No, I did not.

(Testimony of H. K. Armstrong.)

Q. Did you go down to discuss your opinions or your views with Mr. Norris? A. I did not.

Q. Did you discuss it with Mr. de l'Eau?

A. I did not.

Q. Did you discuss it with Professor Taliaferro?

A. I discussed geology with him.

Q. Do you agree with Professor Taliaferro as to geology?

A. Yes, sir, I think he has made a very excellent map there.

Q. Do you disagree with the geology of Byron Norris as to the geology of this structure?

A. So far as I have examined it, there is very little similarity observable between the facts in the field and the map that Mr. Norris puts his name to,

Q. Did you say similarity or dissimilarity?

A. Very little similarity.

Q. Do you mean to state that Byron Norris has produced a map which does not correspond with the facts? A. So far as I have observed, yes.

Q. Where on the map of Byron Norris do you find dissimilarity [927] with the structure as you observed it?

A. In the very critical southwest dips they are absent.

Q. Did you go to where the well had been located to ascertain whether or not any dips were visible there? A. Yes.

Q. Did you find an anticline on the property or in the vicinity of the Cal Bay well?

A. No, no anticline.

Q. Do you disagree with Professor Taliaferro

(Testimony of H. K. Armstrong.)

that there is an indication of an anticline about twenty-five hundred feet to the northwest of the well?

A. There is an indication. When you speak of anticline I think of one that has commercial attractiveness. That one has merely a vestige of geologic interest. It has no commercial attractiveness.

Q. Did you recommend to the Reserve Oil and Gas Company to drill the well of Nigger Heaven Dome? A. I did not.

Q. Do you know what the Reserve Oil and Gas paid for the leases obtained by them on the Nigger Heaven Dome? A. I do not.

Q. Do *you what* the Reserve Oil and Gas refused to sell those leases for before they abandoned them? At what price they refused to sell them?

A. I do not.

Mr. Bourquin: Did you say before they abandoned them?

Mr. Scampini: Before the well was drilled.

Q. In all the incidents of transactions that you have given us, is it not a fact that you were dealing with propositions involving the obtainment of leases by lease scouts or major [928] companies from land-owners such as farmers, and you were not dealing with the actual purchase and sale of leaseholds or royalty interests as such?

A. I don't understand your question.

Mr. Scampini: Will you read it, Mr. Reporter?

(Question read.)

The Court: I think that is rather confusing. I do not understand what you mean by that either.

(Testimony of H. K. Armstrong.)

Mr. Scampini: Very well. I will reframe the question, your Honor.

Q. You have testified to certain transactions involving the taking of leases in and about this territory at anywhere from \$1.00 to as high as \$30 an acre. Calling your attention to the transaction that you said brought as high as \$30 an acre, would you please state whether or not that was a \$30 per acre bonus paid to the landowner plus the usual royalty as a consideration for obtaining a lease?

A. It was paid to the landowner.

Q. Have you any knowledge of any transaction, after a lease has been obtained in the fashion that you have testified, where the lease was thereafter sold by the person to someone else who had knowledge of the situation? A. Yes.

Q. Please state the transaction.

A. I am not at liberty to do so. This was information that came to me as a consultant with a client, and it is a matter of negotiation at the present [929] moment, and I am not at liberty to do anything about it.

Q. I will not encroach upon your confidence. I only ask you this question: Do you know of any transactions involving the sale of royalty interests by a landowner, knowing the land within the Rio Vista field, within the last two years?

A. That would be 1944 and 1945?

Q. Yes. A. Or 1945 and 1946?

Q. Or thereabouts—1944, 1945 and 1946?

A. Yes, I am familiar with a number of them.

Q. At what price per acre per cent did the roy-

(Testimony of H. K. Armstrong.)

ality interest of the landowner owning the land in the Rio Vista field sell in the transaction concerning which you say you know?

A. I can't recall the figures, no.

Q. Would it run into hundreds of dollars per acre? A. I do not recall the figures.

Q. Would it run as high as a thousand dollars per acre?

A. I still do not recall the figures. As a matter of fact, I have no occasion to refer to those data, because the situation there is so dissimilar from the Faria situation that I did not refresh my memory as to those prices.

Q. The only reason why you think it is dissimilar, however, is because you have concluded that the Cal Bay well was a dry hole, isn't that true?

A. No, sir.

Q. That is the basis of your valuation though, isn't it?

A. It is a partial statement of the basis. [930]

Q. (By the Court): These wells in the Rio Vista district that you are talking about are producing wells?

A. (By the Witness): They are very large producing wells, your Honor.

Q. (By the Court): You are talking about a landowner's interest in those wells?

A. (By the Witness): Who has a current income from them.

Q. (By Mr. Scampini): Mr. Armstrong, did you collaborate with Paul Paine in the publication of a book entitled "Oil Property Valuation,"

(Testimony of H. K. Armstrong.)

printed in August of 1942? A. No.

Q. Have you read the book? A. Yes.

Q. I note here a statement to the effect as follows:

“And thanks should be recorded here to H. K. Armstrong, Ernest K. Parks and Robert Moore, who have done much to improve the original manuscript of this book.”

Did you have anything to do with preparing or improving the manuscript of the book?

A. I think that was just a great statement on the part of Mr. Paine in acknowledgment of discussions we had had regarding the matters of which the book treats.

Q. You have read the book since it came out, have you not? A. Many times.

Q. Generally speaking, it is considered to be a reliable textbook on oil property valuation, is it not?

A. It is regarded very highly. [931]

Q. And you do not disagree with any of the statements found in this book, do you?

Mr. Bourquin: That is an omnibus question, your Honor. I object.

The Court: I do not wonder that the witness was stopped by that question.

Mr. Scampini: It is in the class of “Have you stopped beating your wife yet?”

The Witness: I would not be human if I did not disagree with some of them.

Mr. Scampini: Let us go over it statement by statement then, and we will bring it into focus with the subject of this examination.

(Testimony of H. K. Armstrong.)

Mr. Bourquin: May I suggest this: Mr. Paine is going to testify. Do you think it is necessary to review this with Mr. Armstrong? If you want to let it rest you can review it with Mr. Paine.

Mr. Scampini: I would prefer to review a statement here with Mr. Armstrong and then go on to something else.

Mr. Bourquin: Your Honor, I am not satisfied that this is a proper basis of cross-examination.

The Court: I am not either.

Mr. Bourquin: I am going to object to it.

The Court: I think it is going pretty far afield. This is merely testimony as to the value of the property. If it [932] is legitimately within the field of cross-examination, of course, it should be allowed.

Mr. Scampini: It is for the purpose of testing the witness' knowledge of the formula for valuing unproved land. He says this was on unproved land.

Mr. Bourquin: But to this witness, the Court and the jury, this book is hearsay. If Mr. Paine was on the stand it would be admissible, or if Mr. Armstrong said, "I based my opinion on what I read in Mr. Paine's book," it would be admissible.

The Court: You can ask him on what facts he based his opinion, but whether he agrees with what someone else said should be the method of appraising would not be proper cross-examination, because that would get into an endless field of cross-examination, and I do not think I would want to permit that. It would be confusing to the jury. Your opponent could bring in ten other books and ask the

(Testimony of H. K. Armstrong.)

witness if he agreed with what somebody else said on the subject. It is not a basis of examination of a witness.

Mr. Scampini: Has your Honor ruled?

The Court: You ask a question and then I will rule.

Q. (By Mr. Scampini): Do you agree with the statement found in Mr. Paine's book reading to the following fact at page 53, dealing with royalties on unproved lands:

"In California with the same outlook—" that is to [933] say unproven—"royalties will be dealt in at \$4 to \$8 per acre per cent, equivalent to \$50 to \$100 a royalty acre."

The Court: If there is an objection to that I will sustain it, because it is very obvious that no one could tell what the man was referring to in the book. You are going to ask the witness to refer to a statement that somebody else made without having the full context? I sustain the objection. I regard that as far beyond the limits of cross-examination.

Q. (By Mr. Scampini): Have you valued the unproved mineral rights of the Kern County Land Company for the purpose of issuing securities to the public in 1939? A. No.

Q. Did you do it for Dean Witter and Company?

A. I reported a number of times to Dean Witter on my opinion of the market value of the Kern County Land Company oil properties.

(Testimony of H. K. Armstrong.)

Q. Did you prepare an estimate of the Kern County Land Company future royalty oil income earnings as of November 1, 1939, for the benefit of Dean Witter and Company?

A. I made such a report to them.

Q. Did you not in that report classify all of the unproven and of the Kern County Land Company under the heading of Undetermined Possibilities at the sum of \$10,000,000?

The Court: Now, that is going to call for a discussion by this witness that might take days, for him to tell us why he made another appraisal in another case for \$10,000,000, involving huge properties, and I do not see that that is [934] pertinent to this examination, unless it has something to do with the properties that are in the neighborhood or are in proximity.

Mr. Scampini: If it please the Court, he has gathered together a series of acres of land upon which there was a single indication of oil or gas produceable therefrom, and he has valued that oil or gas possibility, which he even calls an undetermined possibility—not a near possibility—at \$10,000,000. On what basis would he value something that was not undetermined?

The Court: That is purely argumentative. Counsel, and far beyond the issues of this case. Any expert might have evaluated hundreds of other pieces of property, and unless we have the facts in each one of those cases and all the circumstances, you could not make a comparison. It would be an end-

(Testimony of H. K. Armstrong.)

less examination if the Court permitted that deal to be inquired into. I do not know whether there has been an objection, but the Court on its own motion would hold that that is beyond the scope of the examination. We will take the afternoon recess at this time. Please bear in mind the admonition of the Court.

(Recess.) [935]

The Court: You may proceed.

Q. (By Mr. Scampini): Mr. Armstrong, at the time that you made the valuations did you consider the property of Cal-Bay and of Joseph Faria, Jr., to be undeveloped land? A. Definitely.

Q. Did you consider it to have any possibilities for production of oil or gas?

A. Speculative value for gas, yes.

Q. Did you consider it to have reasonable possibilities of discovery of oil or gas on the property?

A. I don't know what you mean by "reasonable," Mr. Scampini. I might say that one well in twenty, one wildcat well in twenty, or one in one hundred, something in that range, succeeds in making a discovery, and I don't know "reasonable" lies within that wide range.

Q. Do you follow a formula for evaluating oil or gas rights in land offering only possibilities for development? A. No.

Q. Each valuation that you make, is it based upon an individual formula which you apply to a particular situation? A. No.

(Testimony of H. K. Armstrong.)

Q. Did you evaluate in 1939 the possibilities of discovery of oil or gas on the Wheeler Ridge structure near Bakersfield at the sum of \$750,000?

A. I assume you are referring to a report that I wrote to Dean Witter.

Q. Yes.

A. I don't recall the figures, but that may be right.

Q. Was there any development going on on the property at the time you gave it a value of \$750,000?

A. I can't recall. The report would show, I think. [936]

Q. Isn't it a fact that subsequent to the making of your valuation of \$750,000 on the possibility, the Shell Oil Company drilled Plieto No. 1 on the west end of Wheeler Ridge, and it turned out to be a dry hole?

A. I don't recall the date that well was drilled. I know a well was drilled there and it was on the westerly extent of Wheeler Ridge, and I recall that they worked down structure on a plunge to where it folded and was tight and irregular. It was a dry hole.

Q. Did it depreciate the value that you gave to the possibilities of the property for oil or gas by reason of the dry hole? A. I don't recall.

Q. What formula did you follow in evaluating that possibility at \$750,000?

A. Mr. Seampini, I do not have a formula. I try to put myself in the position of appraising the feeling of the industry about the speculative value

(Testimony of H. K. Armstrong.)

of such land, what a buyer and seller would agree to to make a trade on it. It cannot be dignified by calling it a formula.

Q. Do you know whether or not you felt it conservative to evaluate a possibility on an unproven structure for the Kern County Land Company at \$750,000?

A. I cannot understand that. I don't think that means to be conservative. I tried to make an estimate according to my best lights, neither being too optimistic or too pessimistic, and conservatism is not a merit, in my judgment.

Q. You made that valuation for the purpose of it being used for [937] the sale of stock by Dean Witter Company, did you not?

A. They did not inform me the purpose of it other than to say they would like to have a report written for their stockholders to bring them up to date on the development in that property, and at the same time asked me to render to them a weekly or monthly statement of developments as they occurred on the Kern County Land Company land.

Q. Mr. Armstrong, you said you did not recall the facts in connection with your valuation of the possibility of the Wheeler Ridge oil structure, and I will now show you report at page 59, your report at page 59, and you can look at it to refresh your memory, and then state whether or not you did not place a value of \$750,000 on that possibility.

A. That is not the way I understood your question. I thought you asked me what effect the dry hole had on this estimate. Am I wrong in that?

(Testimony of H. K. Armstrong.)

Q. First I asked you whether you based that valuation on that possibility.

A. That is correct, that is on November 1, 1939, I placed the value on the speculative possibilities to the Kern County Land Company of \$750,000 as attributable to that portion of their 400,000 acres of land in and around Wheeler Ridge, namely, about 8,000 to 10,000 acres of land.

Q. Did you attribute that value, a value over \$10,000,000, rather, to the speculative possibility of the entire four hundred thousand some odd acres of land in that same report?

A. I should like to explain it. I had made several other [938] reports on Kern County Land Company for Dean Witter, and more recent ones than this show—I cannot recall off-hand these figures.

Q. I will show you the page and you might refresh your memory, if I may, please. Page 63 of your report.

A. May I have the question again, please?

(The question was read by the reporter.)

The Witness: No.

Q. (Mr. Scampini): What value did you attribute to the speculative possibilities for the discovery of oil or gas on all of the undeveloped land of Kern County Land Company?

Mr. Bourquin: How much land, counsel?

The Court: 400,000 acres. What is that, about \$25 an acre?

The Witness: \$25 an acre.

The Court \$25 an acre times 400,000 makes ten million.

(Testimony of H. K. Armstrong.)

The Witness: That's right. My figure was \$7,-500,000.

Q. (By Mr. Scampini): Was that figure of seven million not reduced by you subsequent to making the ten million dollar value?

A. That's right. It was presumably diminished when discoveries were made on the land to which I initially applied a ten million dollar figure, and as results came in and more quantities of oil were developed I diminished the productive value of the undrilled and unproved land and increased the value where the oil had been proven. [939]

Q. At the time you did allocate your value of ten million dollars, there were no indications at all of any production of oil or gas on that land, was there?

A. On the contrary.

Q. They could be only a possibility?

A. That's right, speculation, but it was a very definite oil land value that was attributable to these acres by virtue of the fact a number of very important oil faults added measurably to the California oil reserve. However, I observed the Kern County Land Company immediately prior and during the time I was writing the report. That was oil land, I should like to add.

Q. Taking Cal-Bay Corporation, for instance, into consideration, owning the lease that it did, and having started to drill the well that it did drill, at what point thereafter do you think would have been

(Testimony of H. K. Armstrong.)

the most opportune time for the sale by Cal-Bay Corporation of that leasehold interest?

A. I believe at the time it got the first showing in eocene sand.

Q. At that time what value would you allocate to the leasehold interest of Cal Bay Corporation on the Mary Faria property of 208 acres?

A. I cannot answer that right off. I would have to put my mind back to consider that. That was quite a time back of the time I was asked to appraise it.

Q. In your opinion would the value have been higher than in November or December of 1944?

Mr. Bourquin: When does that "then" refer to, Counsel? What point of time? [940]

Mr. Scampini: I will put it this way: Would you have allocated a value to the leasehold estate of Cal-Bay Corporation on the Mary Faria property on July 24, 1944, which was higher than the value that you allocated to it on January 15, 1945?

A. I will have to refer to the log to know what the date—May I have the question?

(Question read by the reporter.)

A. No.

Mr. Scampini: Do you think the value of the leasehold estate of Cal-Bay on the Mary Faria property was approximately the same on July 24, 1944, as it was on January 15, 1945?

A. Mr. Scampini, the situation in my mind was this, that they had a somewhat poorly speculative prospect as of July, 1944. They drilled ahead and

(Testimony of H. K. Armstrong.)

found some evidence of gas to realize in a sense some of those speculative prospects. The value remained about the same throughout that time.

Q. When were those speculative possibilities realized?

A. You say "realized." It was my word. I think it was poorly chosen. They encountered showings which were, let us say, what they were hoping to find.

Q. In your opinion, the showings which they encountered were not worth very much, as far as raising the value of the property, is that right?

A. That's right. They were the kind of showings that are so frequently encountered. I say frequently, but insignificant in what the ultimate worth is, and I don't [941] regard them as significant.

Q. Is the basis of your opinion of the value of the Cal-Bay Corporation leasehold estate on the Mary Faria property, or one of the bases, your assumption that the formation penetrated in November, 1944, was in the cretaceous?

A. No, that is not right.

Q. Would your value have been higher than the one which you give if it were a fact the well penetrated the Martinez on November, 1944?

A. As of what date?

Q. As of November, say, 29th, or 27th, 1944.

A. I don't understand the question.

Q. Would you have allocated a higher value to the leasehold estate of Cal-Bay Corporation than the value which you have given if it were a fact that

(Testimony of H. K. Armstrong.)

on November 25, 1944, the well penetrated the Martinez and the gas which resulted in the blow-out came from the Martinez formation, and not from the Cretaceous formation?

A. Slightly higher, yes.

Q. How much higher?

A. 25 per cent, maybe. However, that question is really a very difficult one to answer without any study, because the amount of sand encountered, if it were assumed in the Martinez would be considerably significant inasmuch as in the Martinez it is possible to find sands which have good characteristics in producing gas. The experience has been pretty much to the contrary, and the thickness of sand found would almost have to be written into the assumption before I [942] could give you an answer.

Q. In arriving at your value, did you know how many feet of Martinez formation underlay the Cal-Bay Faria well below the point where the Martinez was penetrated?

A. Yes.

Q. How many feet?

A. Something less than 22 feet. That was both shale and sand.

Q. At what depth did you state were the 22 feet of Martinez formation in the Cal-Bay Corporation—

A. Somewhere between 4215 and 4237.

Q. Then you disagree with Mr. Norris and Mr. de l' Eau, that the well penetrated the top of the Martinez formation at 4975 feet; is that right?

(Testimony of H. K. Armstrong.)

A. That's right. As I stated before, I examined the cores at a depth of about 4400 feet, and it appeared to be cretaceous formation to me, and the very fact that my client—I advised my client and he lost interest in the project, and I did not return to the well.

Q. What client are you referring to?

A. This is the client I mentioned before, Peter Cook, Jr.

Q. When did you examine those cores for the account of Peter Cook, Jr.?

A. It was in October, some time in October, 1944; I don't remember the exact day.

Q. Were you at the well? A. Yes.

Q. Where did you see the cores?

A. At the well.

Q. What was the purpose of your visit to the well? A. To examine the cores. [943]

Q. For Peter Cook? A. That's right.

Q. Was he interested in acquiring some of this acreage?

A. Well, he had carried—he goes to San Francisco from Rio Vista where he lives every Thursday and drives by the well, and I drove by it with him frequently, and as a consequence we took a little side trip up and examined the cores. He did not continue thereafter.

Q. Where were the cores examined by you?

A. At the well.

Q. You say you concluded from your examination that they appeared to be cretaceous?

A. That's right.

(Testimony of H. K. Armstrong.)

Q. Are you a paleontologist? A. No.

Q. Are you a micro paleontologist?

A. No.

Q. You just looked at the cores?

A. That's right. I have looked at thousands of feet of them.

Q. Now, with respect to your opinion that no severance damage resulted to the portion of the leasehold not taken, is it not a fact that if a well were to be drilled on the property taken by the Government in this case to a productive sand that it would drain from the remaining property of Mary Faria, assuming that the sand was found to be productive?

A. May I have that question read?

(Question read by the reporter.)

A. If I understand the question——

Q. (By Mr. Scampini): Would not such drainage affect the value of the leasehold estate or the royalty interest of Mary [944] Faria?

A. Yes, and my reasoning on that is, of course, just the opposite to the one your question suggests to me; that is, because of the ponderousness of the Governmental agencies in doing anything that anybody holding a lease adjoining where Government land is sought has higher market value; that is the experience in the industry; that is over land where the competition comes in from private ownership. To my thinking, the severance damage may have been even a severance benefit. However, I don't think that is material.

(Testimony of H. K. Armstrong.)

Q. There is nothing to stop the Government or the Navy in this case from leasing the property which it had taken from Cal-Bay and Mary Faria to Standard Oil Company, and to permit the Standard Oil Company to drill a well thereon, is there?

A. I don't know.

Mr. Bourquin: That is a legal question.

Mr. Scampini: It is done every day; done every day. You are familiar with the Elk Hills Naval Reserve, aren't you?

A. Yes. That is an outstanding example of where Standard Oil Company produced wells, other wells within the Naval Reserve for many, many years, without a single well being drilled to offset the drainage the Navy was suffering. [945]

Q. And is it not a fact that the United States Government, acting through the Navy Department, thereafter leased or gave the right to the Standard Oil Company to drill wells on the property owned by the Navy?

A. I believe so, something like thirty years after the oil had been discovered.

Q. Now, when a potential buyer of the leasehold estate of Cal-Bay suddenly makes up his mind that he would like to buy the leasehold estate as of, say, December 15, 1944, do I understand you to say that that potential buyer would allocate no value to the well which was located on the property in your opinion?

A. That is right. The well only meant that here was something he could spend more money in and

(Testimony of H. K. Armstrong.)

finally find something. It was an entirely speculative thing whether he would find anything or not. He needed money to spend that money.

Q. It was a good hole down to 4,100 feet, wasn't it? A. Not ideal by far.

Q. It could be used, could it not?

A. It is something like an old mine shaft, which would have some utility, but the property without that on there had no attractiveness because access to it was pretty expensive.

Q. From a speculative point of view, the value you gave to the leasehold estate did not take into consideration any value for the well, did it?

A. That is right. I think it was practically all loss, wasted money. [946]

Q. And you think that this buyer could not have used the well that Cal-Bay Corporation had drilled down to 4,100 feet, whipstock out of that hole and continued drilling, is that right?

A. In my opinion a prudent operator would not attempt to do that.

Q. Do you know how many whipstocks were set in the Honker Bay well by the Standard Oil Company before it actually completed the well?

A. I heard of several, but I do not know.

Q. Is it a fact that they put twelve whipstocks in that well? A. I do not know.

Q. Isn't it a fact that they have five fishing jobs on that well?

A. I don't know. I know that they had a great deal of trouble and that they reported it cost them a great deal of money to drill it.

(Testimony of H. K. Armstrong.)

Q. Isn't it a fact that they spent almost a million dollars on that well?

A. I have heard three-quarters of a million dollars, yes. I think it was a dry hole, too.

Q. The Honker Bay well is a dry well?

A. The one that had so many fishing jobs.

Q. But they drilled another hole and brought in some very, very prolific production at Honker Bay, did they not?

A. The well is a fairly good well, but it is a restricted area, a small field, and probably never will repay the cost of development and the risks that were involved in exploration trying [947] to find it.

Q. Nevertheless the Standard Oil Company, after having spent about \$750,000 on drilling the Honker Bay, went ahead and drilled a second well in view of the findings, isn't that right?

A. Yes, they were very much attracted by the findings in the eocene sand as shown in the Schlumberger.

Q. Where were the eocene sands found in the Honker Bay well? At what depth?

A. I don't recall offhand. I have the Schlumberger in my office and a copy of the log and history, but I do not remember the figures.

Q. Wasn't it at 7,200 feet in depth?

A. I don't recall.

Q. Will you take a look at the log that I shall hand to you for the purpose of refreshing your memory?

(Testimony of H. K. Armstrong.)

Mr. Bourquin: What are you handing the witness, so the record will show? Is that the log of Cal-Bay?

Mr. Scampini: That is the log of the Honker Bay well that the witness says he has.

Mr. Bourquin: If your Honor please, this seems to me pretty collateral. I do not want to object to it.

The Court: If you object to it I will sustain the objection.

Mr. Bourquin: I object.

The Court: It is getting far beyond the field of cross-examination of a witness as to value.

Mr. Scampini: Just a moment, your Honor, and I think I am [948] through with the witness. I just wish to consult my associate.

Q. Mr. Armstrong, just one more question: Isn't it a fact that when leases are obtained by companies on potential structures or by lease scouts and the leases are obtained from the landowner, that in addition to the cash bonus that you have enumerated in the transactions referred to you there was also the royalty of $12\frac{1}{2}$ per cent, sometimes $16\frac{2}{3}$ per cent, allowed to the property owner?

A. I presume you mean the representatives acting as lease men for companies or lease brokers? You said scouts and I was a little uncertain.

Q. I will ask that question again. I withdraw my first question and see if I can make it clearer. Isn't it a fact that in the transactions that you have enumerated during your direct examination the

(Testimony of H. K. Armstrong.)

landowners, in addition to the cash bonus which you said was paid to them for the lease, received the usual royalty of $12\frac{1}{2}$ per cent and in some cases, $16\frac{2}{3}$ per cent of the oil or gas produced from the property?

Mr. Bourquin: You mean an agreement?

Mr. Scampini: Or an agreement to pay a royalty.

The Witness: The $\frac{1}{8}$ royalty is the usual provision in the leases that I am familiar with.

Q. (By Mr. Scampini): And would such a one-eighth royalty be reserved by the landowner in addition to the cash consideration received?

A. That is right.

Q. And in addition to that they would receive a commitment for [949] the drilling of a well, would they not?

A. Not necessarily.

Q. Well, if a commitment for the drilling of a well was not given, wouldn't the lessor also agree to pay actual cash rental for the land, so much per acre.

A. That is very unusual, that the lessee will agree if he does not drill, to pay a rental, a nominal rental like 25 cents an acre a year or eight and a half or some figure for the privilege of deferring drilling another year.

Q. Sometimes a dollar a year, is that right?

A. It varies widely.

Q. Sometimes \$5.00 an acre?

A. I never heard of it in this area. That sounds like an oil lease to me.

Q. How about the incident where the cash con-

(Testimony of H. K. Armstrong.)

sideration was \$30 an acre? Was there any prospect of discovery of oil or gas in that district at the time?

A. Your Honor, I can't answer that question. In my opinion?

Q. Yes.

A. It was prospective land, a speculative thing. People were making their bets in the play and they hoped.

Q. Did you obtain such leases yourself in that district and pay that consideration?

A. No, sir.

Q. Did you recommend to any of your clients to do so?

A. I recommended at a dollar an acre, yes.

Q. Did your clients pay as high as \$30 an acre?

A. They did not. [950]

Q. Was it a major company that paid as high as \$30 an acre? A. Yes.

Q. Plus the reservation of the royalty?

A. Well, they did not pay any. They made a reservation; no royalty was paid.

Mr. Scampini: That is all.

Redirect Examination

By Mr. Bourquin:

Q. Mr. Armstrong, on this last subject, as I understand you, on these transactions the lessee pays a cash consideration and agrees that if oil or gas is discovered he will give a share, one-eighth usually, to the owner, is that it?

(Testimony of H. K. Armstrong.)

A. The owner reserves the right to get as a royalty a certain proportion of the oil or gas if and when produced.

Q. But except for that agreement the cash, whether you call it a bonus or what, is all he gets for the lease, is that it? A. Yes.

Q. This rental you spoke of, what is the rental for deferring drilling under these leases? Was it \$1½ cents?

Mr. Scampini: It went as high as five and ten dollars an acre, sometimes \$25. It depends on the circumstances.

Mr. Bourquin: No, I am talking about the leases here.

The Court: The Cal Bay leases.

Mr. Bourquin: Eight and a half?

Mr. Scampini: I think so. I think that is correct. [951]

Mr. Bourquin: If it is not drilled within the stipulated time. One more question.

Q. Counsel asked you if these transactions that you told us about had been carried up and down this area in northern California, the trading, were not all transactions with uninformed persons; he spoke of the farmer. Let me ask you this: In whose hands were the Potrero Hills wells that you pointed at there that were drilled?

A. Richfield Oil Company.

Q. Would you consider the Richfield Oil Company to be an informed person?

A. Definitely.

(Testimony of H. K. Armstrong.)

Q. And one who knows, one that a broker would not take advantage of? A. I think not.

Q. How about the matter up at Sites that you told us about where they had an experience like this at the Potrero Hills and the wells were abandoned and sold for a dollar?

A. That was the Continental Oil Company that abandoned that well and those leases.

Q. They abandoned them? A. Yes.

Q. They gave it up for nothing?

A. Yes, they quit-claimed it back to the owner.

Q. What about that Capital Company well that is spoken of here? Who drilled that?

A. I believe that well was one drilled by the Ohio Oil Company. They had a very spectacular blowout in one of their wells. It was known all over the [952] country because of the spectacular nature of it. The well produced an estimated twenty, thirty or forty million feet of gas and a lot of water. The well cratered. The derrick fell in. The boilers and all the equipment fell into the crater, and the thing bubbled and erupted for several days. The company immediately employed another contractor to drill a well alongside the well that was blowing wild with a plan of deflecting in that well and killing it by pumping mud into it, and while they were doing that, that well died, and so they did not carry out their plan with the second well. They continued to go deeper with the second well that was originally intended to kill the blow-out, and they made a small gas well out of it. They

(Testimony of H. K. Armstrong.)

were unable to duplicate anything near the proportion of the first well. Then they moved south some distance and drilled a third well and got some production there, and concluded it was not an attractive commercial situation, that they were not going to make enough money out of it to keep it, and so they quit-claimed the wells and leases back to the landowner.

Q. Gave it up for free? A. That is right.

Mr. Bourquin: That is all.

Recross Examination

By Mr. Scampini:

Q. At the time the blowout occurred in this well that you have just spoken about, what do you think was the fair market value of the leasehold estate of the [953] Ohio Oil Company per acre on the property leased at the time?

A. Well, I can only answer that it was coming out of the Cretaceous and nobody gave it much weight.

Q. What value would you allocate to the lease of the Ohio Oil Company on the property in question at or about the time when this extraordinary blowout occurred, per acre?

A. I do not think it would have had a high market value. The gas was accompanied by salt water, as it was in the Faria well, and the mud was cut by the salt water and gas, and consequently this accident—a blowout is an accident. It is not something you encounter in the regular drilling of a well—

(Testimony of H. K. Armstrong.)

and while it was so spectacular in its nature, people were interested in it as a curiosity, but not as a gas venture.

Q. Do you mean to state, then, that the Ohio Oil Company with all of its experience went to work and drilled a second well and a third well there in spite of the poor showings and prospects obtained from the first one?

A. That is right, and then abandoned them all.

Q. In your opinion, then, they did not know their business, is that right?

A. In my opinion they were satisfied it took more gas than they were able to obtain from these wells to make it attractive to them as a business matter.

Q. But they thought the leaseholds to be of sufficient worth in money to warrant the expenditure of enormous sums of money for the drilling of a second and a third well, is that right? [954]

A. As I recall, they were not particularly expensive wells, and I could give you the details as to how much gas they got from the second and third wells.

Q. How much money did they spend on the drilling of the second well in reliance on the showings of the first well? A. I do not know.

Q. Would it be a hundred thousand dollars?

A. Probably not. It was a relatively shallow well.

Q. How deep was the well?

A. It was drilled to 6,000 feet and plugged back

(Testimony of H. K. Armstrong.)

to 2,248, and was completed between the depths of 2,237 and 2,245 feet for 5,356,000 cubic feet per day rate.

Q. And that production came from the Cretaceous, you say?

A. Cretaceous production. The shut-in pressure on the tubing was 515 pounds, and after it went up to 600 pounds, then they drilled another well.

Q. How much did they spend for drilling the second well to 6,000 feet in your opinion?

A. I can only make a rough estimate. Probably \$60,000.

Q. How much do you think they spent for drilling the third well?

A. The third well was 3,300 feet and they probably drilled it for 25 or 30 thousand dollars.

Q. So you would say the Ohio Company spent approximately \$100,000 based upon the showings obtained in the first well, isn't that right?

A. Yes, that is right. [955]

Q. How many acres were embraced within that lease?

A. I think my figures are correct. Approximately three thousand acres.

Q. All on the structure?

A. That was the geophysical plane. I don't know how much of it was good.

Mr. Scampini: That is all.

Mr. Bourquin: No further questions. We have just one more witness, your Honor, the valuation expert. Do you want us to proceed?

The Court: I think so, Counsel. I was thinking maybe we ought to have a night session to-night. This case is taking a long time and there are other important cases, including criminal cases, waiting for trial. I do not know whether counsel planned to argue this case to the Jury or how long they will want to argue. I want to get it to the Jury tomorrow or the next day at the latest. I do not see how we can do it unless the evidence is completed.

Mr. Scampini: Our rebuttal will not take very long, I might say.

The Court: Suppose you get started with your witness, Mr. Bourquin, and see how far we can get.

PAUL PAINE

called as a witness on behalf of the plaintiff; and being first duly sworn, testified as follows: [956]

The Clerk: State your name to the Court and Jury?

A. Paul Paine.

Direct Examination

By Mr. Bourquin:

Q. Mr. Paine, what is your business or profession, please?

A. I am in the oil business. I am an engineer.

Q. Will you trace for us or state for us what has been your training and experience in the oil business?

A. My training was had at the Massachusetts

(Testimony of Paul Paine.)

Institute of Technology, from which I graduated in 1905. I came west, was in mining work a few years until 1908, when I began working in the oil fields, and since then I have been continuously connected with oil field operations.

Until 1917 I worked in the fields of California, the latter part of that period as field superintendent of the Honolulu Oil Company, a concern which drilled wells and produced oil, which was sold to refineries, and gas, which was piped for distribution in Bakersfield and Los Angeles.

I then went to Oklahoma with the Gypsy Oil Company, the operating unit in the mid-continent area of the Gulf Oil Corporation.

In 1921 I cut loose on my own hook and since then I have had no continuing corporation connection, except that for several years I was on the board of directors of the Union Oil Company, and for one year, from the middle of 1922 until [957] the middle of 1923, I was vice president of the Shell Company of California, in charge of its production operations.

My partner and I drill wells and produce oil in a small way and entirely for our own account, and in addition to that I have an independent engineering practice, which is occupied chiefly with the valuation of oil properties and gas properties and companies.

I neglected to relate that I have had two other continuing connections for a number of years. For the Kern County Land Company I am a director

(Testimony of Paul Paine.)

and am concerned with its oil affairs. For Bank of America I am its consulting petroleum engineer, chiefly for the purpose of passing on the values of oil and gas properties which are submitted as collateral in connection with loans.

Q. Mr. Paine, have you made an appraisal for the purpose of presenting it here of the properties which are the subject of this proceeding, consisting of the Cal Bay and Joe Faria leases there and the royalty interests in those leases? A. I have.

Q. Have you made a study and investigation of that property? A. Yes.

Q. Have you made a study and an investigation of the surrounding properties?

A. To a limited extent.

Q. To a limited extent? A. Yes.

Q. Do you know and are you prepared to say what oil and gas properties for such explorations have been and sold for in Northern California?

A. Yes, gas properties. I know of no oil property operations.

Q. You know of no oil properties in Northern California? A. No.

Q. Have you considered the geology of this situation over there in Cal Bay and the Faria well?

A. Yes.

Q. Have you examined the log and the mud and Johnston reports for the data that they would provide?

A. I should say I have not informed myself as thoroughly as some of these witnesses on the geology.

Testimony of Paul Fane.

I have reviewed the driller's log, the history of the well which was provided to the State Division of Oil and Gas. I have listened to the account of the oil operations which has been presented here.

Q. Upon these have you formed an opinion of the market value of the properties as of the dates in question? A. I have.

Q. Will you tell us please, what is your opinion of the market value of the 204.87 acres in parcel 33 that was part of the property of Mary Farn and subject to the Cal Fay lease, as of [1935] January 26, 1947? A. For the entire mineral interest?

Q. For the entire mineral interest, if you will, please?

A. \$2508. That is at the rate of \$12 per acre.

Q. Can you tell us how you allocate, if you do, that between the lessor's share and the royalty value as respect their market value as of the date in question?

A. To the lessor, \$1672—that is \$8 per acre; and to the lessee, which was Cal Fay, \$836. Now, understand that the \$1672 is the value of the lessor's reservation of one-eighth royalty.

Q. What, in your opinion, was the market value of the mineral interest in parcel 32, consisting of the 5 acres subject of the Cal Fay lease, which was the property of Edward Farn as of January 26, 1945?

A. The total mineral interest \$80 at the rate of \$16 per acre, allocated to the lessor \$50, to the lessee \$30.

(Testimony of Paul Paine.)

Q. When you say to the lessor, that represents, again, the royalty interest?

A. The royalty reservation.

Q. And to the lessee \$30?

A. To the lessee \$30.

Q. What about that other small parcel in there that is a fraction below 5 acres, consisting of parcel 57, which was the property of Mae Roche, and subject of the Cal Bay lease as of January 15, 1945?

A. Well, I have worked this out as of July 24, 1944. Are you sure that is the correct date?

Q. That parcel as of July 24? No, I think perhaps that is my fault in giving you the legal filing dates. You are right. [960] It is July 24, 1944. Tell us about the 5 acres, the property of Mae Roche under the Cal Bay lease on July 24, 1944?

A. That is \$120 at the rate of \$24 per acre, allocated \$60 to the lessor interest and \$60 to the lessee.

Q. Coming to these properties, subject of the Joseph Faria lease—and I will say that the date of valuation there that we want you to give us, if you can, is the market value as of July 24, 1944—take first the 63.91 acres in parcel 59, which was the subject of the Joseph Faria lease.

A. \$1152 for the full mineral interest at the rate of \$18 per acre, allocated, to the lessor \$640, to the lessee \$512.

Q. What about that little piece of .65 of an acre in parcel 64? What is your opinion of the market value of the mineral interest in that as of July 24, 1944?

(Testimony of Paul Paine.)

A. \$5.20, at the rate of \$8 per acre.

Q. \$5.20?

A. Yes, allocated \$2.60 to the lessor and \$2.60 to the lessee.

Q. Lastly, what is your opinion of the market value as of July 24, 1944, of the 96.59 acres—again I am forgetting. That is the Joe Faria lease on the Chevez property, which they have withdrawn.

Mr. Paine, will you state for us your reasoning on the basis of the conclusions of values that you have arrived at and announced to us?

A. The basis of this valuation has been, first, the consideration and review of the history of this well [961] and the accomplishing of the exploration effort contained in this well, and the results obtained from it; also a consideration of the seepages of gas and the seum of oil which is reported as having been found on the wells nearby, and the general conditions in the surrounding gas fields of this Northern California region, and, finally, my knowledge of what acreage has sold for in actual transactions between operators and owners of leasehold interests, land owners and the oil companies, in connection with their acquisition and testing of these various areas where they have drilled wells. Do you want a lot of detail on this?

Q. No, I think not. As far as this question of severance that has been asserted here, is it your opinion that the property of Mary Faria that was not included in the taking and consisting of 158 acres in parcel 59 was depreciated in value, in

(Testimony of Paul Paine.)

market value, by the taking of the property that the Government did take?

A. No, my belief is as to all of these tracts that the severance did not affect adversely these pieces that lay outside the boundary.

Q. For what reason, please?

A. Because they are of sufficient size to warrant developing, and they could have been developed, and I feel that their position, if anything, would have been benefitted. If there were a gas field underneath their position would have been benefitted rather than been injured by the acquisition by some agency of this nature which probably would not go ahead and develop it, and therefore the tracts [962] outside would get the benefit of having the straws in the lemonade and getting the benefit of drainage.

Q. One last question: In your opinion did the existence of this well on the property upon which it was located, parcel 59, add anything to the market value of that property as of January 15, 1945?

A. No.

Q. Why, please?

A. Because the well was in bad shape. It was plugged and then had been redrilled. It was plugged again, and a prudent operator—I think that a prudent operator would have started with a new well from the grass roots. Certainly I would have done so, because of my experience many times in taking over situations of this kind. One never knows what the condition of the well is, and I have

never yet worked on one where the actual condition underground was one as described. There is always something. The boys do drop a monkey wrench in it, and working over these old junked wells is too uncertain, contains too much grief.

Q. Will you tell us, Mr. Paine, from your information, what have such properties in which there have been explorations for mineral interests in this vicinity bought and sold for?

A. The companies that are active up there and are buying leases generally starting out lease and pay a dollar an acre. They are not limited to that. They frequently go up to \$2 or \$3. It may reach as high as \$5 an acre. If they are putting together a block which they expect to explore and have gotten [963] together the best part of it at a lower rate, they will maybe reach out and pay \$10 or \$20 for select pieces that are needed to close out the block. They probably would not pay that for the whole thing, but, after all, the \$20 or \$25 an acre they pay becomes diluted over the entire acreage. That is a measure or the order of magnitude of prices that are paid by lessees in exploring for gas up in that region, and \$1 an acre was the prevailing rate for a long time.

Right currently, there is a leasing going on south of Rio Vista. I would rather not give the exact spot. But there is leasing going on south of Rio Vista by two major oil companies. They are paying \$2 an acre for leases. Now, sometimes they will pay 1/6 royalty in the lease instead of a 1/8th. The royalty reservation has moved up somewhat.

(Testimony of Paul Paine.)

Over northwest of Rio Vista in a locality Shell Oil Company now, by reason of a trend from discoveries it has made, is paying up to \$10 an acre. Now, that is for selected acreage that they rather want. I am speaking now of the price paid for a lease which contains a reservation to the land owner of a $\frac{1}{8}$ or $\frac{1}{6}$ royalty.

It is almost impossible to get any records of sales of mineral interests, that is, the mineral under the land separated from the surface. Actual sales of mineral interests are exceedingly rare, and one principal reason for it is, these lands are valuable agricultural lands, lots of them, [964] and the amount which the dealer, the trader, the investor and the oil company would be willing to pay for the full mineral interest is way less than that which the farmers and the land owners will accept. They have all discussed it. They know that it is the part of bad wisdom to accept \$10, \$20 or \$25 an acre for the full mineral interest in the land, simply because it affects their title so badly. Separation of those mineral interests from the surface just fritzes the title of a lot of this \$500 and \$1000-an-acre land. The full mineral interest, therefore, is exceedingly difficult to ascertain.

There was a trade made recently in Chico in a block that Standard Oil is putting together and buying at from \$1 to \$3 an acre for leases. There was one 40-acre tract where the owner would not lease. He would sell the whole thing for \$50 an

(Testimony of Paul Paine.)

acre. It was rice land which was worth \$35 or better per acre. So they feel, having bought the mineral interest, they have paid something under \$15 an acre for that. That is the only specific interest I know of of the sale of a mineral interest although many efforts have been made going through there to buy mineral interests from the farmers; they just would not sell.

Q. You mean by that they will retain the control of the property?

A. When they lease they do not part with their lands. When they sell a mineral interest they are segregating the mineral rights underground and parting with their interest, and that gets into the abstracts, and the title companies' records; whereas if they [965] lease for the drilling, when the lease is terminated they get a surrender from the oil company, and their title is clear. They are perfectly ready to lease in most instances.

Q. So the commonest trading is the trading of leaseholds? A. Oh, yes.

Q. And the trading of royalties?

A. Yes. The trading in royalties is not as active as one might think, certainly not nearly as active as it is around the oil fields.

Q. How do you arrive at your appraisal of the value of the royalty interest?

A. Well, I just divide it off into what I consider to be a ratable proportion. There is no formula. It is a matter of opinion. I wish I could be more specific, but I can't.

Mr. Bourquin: I think that is all.

The Court: Would you prefer to defer your cross-examination until the morning?

Mr. Scampini: Yes.

The Court: This is your last witness, Mr. Bourquin?

Mr. Bourquin: Yes, your Honor.

The Court: Would you gentlemen be prepared, then, to argue the matter tomorrow afternoon?

Mr. Scampini: I am.

The Court: You think there would be no doubt about concluding the evidence tomorrow morning?

Mr. Scampini: My rebuttal won't take very long, I assure [966] you.

The Court: I would like counsel to remain if they will. I will excuse the jury until ten o'clock tomorrow morning. Please bear in mind the admonition of the court.

(Thereupon the jury was excused and retired from the court room. The following proceedings were out of the presence of the jury.)

The Court: I do not know what counsel have in mind with respect to the time for argument. I suppose each side would want some reasonably substantial period of time to argue the case. I think it only fair to say, however, to the counsel for the defendants, as I do not want them to be in the dark as to the court's attitude in the matter, as to what the court has in mind to say to the jury in this case, and it would be, in my opinion, very unjust to the counsel for the defendants if they

would proceed to argue the case and be in the dark as to what the court might instruct the jury—that in my opinion would be unfair. It may be other judges might take the view of having counsel go ahead and argue the case according to their lights and then tell the jury about it afterwards. But I feel that from my own experience as a lawyer for many years, lawyers like to know and do not like to be kept in the dark. I feel duty bound in this case, from what I have heard, to tell this jury that in the opinion of the court the view of the so-called experts presented by the defendants is entitled to no weight [967] whatsoever, and that the opinions that they have given are fantastic and are at a borderline, at a point where a more serious criticism could be made of them.

Now, having that in mind, it may be that counsel may have some views as to how they want to present this matter to the jury, or whether they want to present it to the jury at all. I am very frankly stating the view of the court. It is not binding on the jury, and when I give it to them I shall be most specific to tell the jury that they can come to any opinion that they want on that subject, but I shall nevertheless feel it my duty, as I have had occasion to do only once before in any case since I have presided in this court, to express an opinion on the facts of the case; but I feel that my conscience prompts me in this case to make an observation to the jury as to the opinion of the court as to the weight of this evidence. I say that so counsel may know about

it, because it may be it might put an entirely different aspect upon the manner in which counsel wish to present the case to the jury, and it is only fair to repeat myself that they should know about that. It is better that they know about it now than that they be taken by surprise afterwards.

I am not called upon to pass upon this question yet, but if the jury were, despite the statement of the court as to its opinion as to the weight of the evidence, to bring in a verdict for any large sum in this case I would feel duty bound to set [968] it aside, because this case does advise some technical aspects and the jury might very easily be misled.

I have very frankly apprised counsel as to my view of the case because I feel that, as a judge, I just cannot compromise with a conscientious viewpoint that I might have, and it is better to state it than it is to leave it unsaid and have counsel flounder and not know what is going to happen.

I assume from what counsel has said that the evidence will probably be completed tomorrow morning and you may want to give consideration, from what I said, to the manner in which—this applies more particularly, of course, to the counsel for the defendants—the way in which you wish to present this matter to the jury. If you wish a longer recess after the evidence is concluded tomorrow morning in order to prepare for the argument, at whatever time the evidence is completed, I would be willing to adjourn until the afternoon session to give counsel as long as possible, in addi-

tion to the time between now and tomorrow, to prepare any matter.

Mr. Scampini: All I can say in reply to your Honor's observation is, with all due respect to your Honor, and to the court, that it appears to me that the record shows that throughout the trial of this case your Honor has had a somewhat partisan outlook on the litigation before you.

The Court: Not until I had heard the opinion testimony offered by the defendants. [969]

Mr. Scampini: When it comes to that, your Honor, I respectfully submit we have a jury to pass upon the weight to be given to the testimony of the witnesses. The Constitution guarantees us the right of trial by jury for that very reason. It appears to me that this is a matter that should be left to the jury for its decision, subject, of course, to the law that if your Honor should deem the verdict or judgment excessive, upon proper motion your Honor can exercise your prerogative. As far as I am concerned, as counsel for the defendants, I ask leave to address the jury within the scope of the examination and the evidence, without any effect whatsoever upon my intentions brought about by any remarks of your Honor during this session.

The Court: I did not intend that you should change whatever you had planned to do. I merely wanted you to know about it in advance so if you felt you wanted to comment upon it you could feel free to do so, so you won't be in the dark about it.

(Testimony of Paul Paine.)

Mr. Scampini: I appreciate your Honor's admonition and forewarning. I had the lurking suspicion that that was coming for sometime. I feel it is highly unwarranted. I feel your Honor should also tell the jury that the estimates of the plaintiff's experts are fantastically low, because here are my clients with a quarter of a million dollars sunk in this property expropriated from them, and now you are going to tell the jury my witnesses' opinions are fantastically high. I [970] think it is most unfair, your Honor.

The Court: Mr. Scampini, if this were a suit for damages based upon a tort or breach of contract, there would be considerable in what you say. In other words, if you were seeking damages for some wrong that had been committed, all that you say would be quite appropriate, and you would be quite justified in your attitude in the matter. But this is not a suit that arises out of a wrong or out of a breach of contract. This is a suit that involves the superior right of Government to take private property, and the only question there involved is the value of it at the time. There is no expropriation in the sense that any wrong is committed by the action for which the Government is liable for damages. The Government is required by the Constitution to pay just compensation for whatever is taken at the time that it is taken. That is the only question involved. The Government of the United States cannot be required to recoup the promoters of this enterprise for their expenditures in connection with

a speculative proceeding of this kind, and, I take it, you think perhaps the jury should do something about that.

Mr. Scampini: No, your Honor, we do not.

The Court: The court is of the opposite view.

Mr. Scampini: I take the view that the same Constitution to which your Honor has referred places the duty on the jury to determine just compensation, subject to your Honor's right [971] under the law and the statute, to set it aside if you deem it not consistent with the law, but I do not think it is within the province of the court—and I say so most respectfully—that you should tell the jury in the fashion that you have expressed yourself, and I take exception, of course, and take exception to the record, to any such admonition on the part of your Honor to the jury.

The Court: I think the court has the inherent power to make comment on the evidence, as long as it tells the jury that it is merely the opinion of the court. The higher courts have admonished the lower courts in the Federal system time after time to make quite clear to the jury the issues that are involved in the case, and lower courts are frequently admonished to do more than merely instruct in formula fashion, but to lay before the jury clearly the exact issue and the nature of the evidence that is involved in these issues, and I feel it to be my duty in this case to do that.

In order that the record may be quite clear, I wish to repeat again I have made this statement to counsel only for the purpose of advising them in

advance, so that counsel may be free, so far as I am concerned, to tell the jury, if they wish, that the judge has already told them his opinion of the weight of the evidence, but counsel are of a different opinion, and they feel free to tell the jury what they think about the case. I have no objection, whatsoever, to the matter being opened up, [972] so that counsel can take, if they wish, the sting out of the judge's comment on the evidence in advance in their argument, if they wish to, and that is the purpose of my statement now. I need not have done it, but I did it because I know that counsel a lot of times in these cases should have the advantage of that in advance.

Mr. Scampini: I thank your Honor for the courtesy extended to us in advising us of your attitude in this matter.

The Court: We will recess until tomorrow.

(The further hearing of the case was thereupon continued until tomorrow, Thursday, February 6, 1947, at ten o'clock a.m.) [973]

Thursday, February 6, 1947, 10 o'Clock A.M.

The Clerk: United States vs. Certain Land in Contra Costa County.

Mr. Scampini: Ready.

Mr. Bourquin: We are ready.

PAUL PAINE

recalled; previously sworn.

Cross Examination

By Mr. Scampini:

Q. Mr. Paine, is your valuation of the subject property given by you yesterday based upon any assumption, or the assumption that no commercial discovery of natural gas was made in the Faria well at any depth?

A. That is correct.

Q. If the assumption were not true, that is to say, were it a fact that a commercial discovery of natural gas was made in this well, would your valuation have been higher?

A. If it were proved my valuation would be higher.

Q. Can you state how much higher the valuation would be?

A. No, I cannot, because I would have to know something of the well and the information available.

Q. Was your assumption based, I mean was your valuation based on the assumption that no discovery of natural gas was made in the formation penetrated in November, 1944, at 4975 feet? [974]

A. May I have that question?

(Question read.)

A. The assumption was that I do not know whether a discovery were made or not?

Q. Was your valuation based upon the assumption that the result of drilling the Faria well disproved the property as being a potential commercial producer of oil or gas in commercial quantities?

(Testimony of Paul Paine.)

A. No, it was not. There was no disproof. It was simply based on the assumption that all the evidence so far was entirely negative with respect to having determined its commercial size.

Q. In other words, it still might have possibilities in your mind?

A. Yes. All lands have possibilities until the wells have penetrated every part of them.

Q. In this case is it based on the assumption by you that there were no other sands underlying Faria well below 4975 feet that could be penetrated——

A. I made no assumption as to the sands that might be below.

Q. Have you any opinion whether or not any other sands underlie the Faria well after 4975 feet?

A. It would seem to be a guess.

Q. Yes. A. What was the depth?

Q. 4975. A. Yes; that answer is correct.

Q. Was your valuation based upon the assumption that the well at 4975 feet had penetrated the cretaceous formations? [975]

A. I didn't know whether it had penetrated the cretaceous formation. I can't recall as to where the Domengine, the Martinez and the cretaceous were in there. My opinion is that it had penetrated the cretaceous; I don't know.

Q. Did you consider your valuations or your opinion to have been that it was not?

A. No, I did not.

Q. With respect to your statement that the well had no value to a prospective buyer, is it based on

(Testimony of Paul Paine.)

the assumption that the well was, in common language, completely junked?

A. It was not completely junked, no.

Q. Were 4100 feet of the well in good condition, as far as you knew?

A. I just don't know.

Q. Would not a well which had been drilled to 4100 feet and completely cased and in good condition to 4100 feet be of some value to one who was interested in buying the leasehold, in your opinion?

A. At 4100 feet, if it were cased and required a dragging job and were underlain with what has been disclosed with respect to this well, I would consider it would be no value.

Q. The buyer of this leasehold would not be interested in buying the leasehold except for the purpose of drilling?

A. I don't know.

Q. In other words, people just don't buy leaseholds and make leases for the purpose of just doing that?

A. I don't know.

Q. Well, oil operators don't do that?

A. Not oil operators—[976] some oil operators do; oil producers don't.

Q. Oil producers don't. An oil producer would want the leasehold for the purpose of development?

A. That would be what was contemplated.

Q. Would not such an oil producer contemplate the purchase of this leasehold, or one contemplating its purchase, would he mind saving money by using the well?

(Testimony of Paul Paine.)

A. I can't answer that question, because no oil producer would contemplate buying this property. He would have to be a gas operator, not an oil operator.

Q. I am talking about a gas operator.

A. Shall I assume any time you say "oil operator" you mean "gas operator"?

Q. Yes. Would not a person interested in acquiring a producer of natural gas—thank you for the correction—would he not take into consideration and allow a value for that 4100 feet of the well that was completed before?

A. Well, the well is only 4100 feet deep.

Q. Assuming the well to be in good condition to 4100 feet. [977]

A. And nothing below it? I keep thinking of this well, and when you say 4,100 feet, you mean this well, this well has much more to it than 4,100 feet.

Q. What was there between the surface and 4,100 feet that prevented it from being used by a producer of natural gas?

A. Well, there was a string of casing which would have to be drilled through, and then if the well would be deepened, there would be the many difficulties or uncertainties with respect to the material that was below that portion of the well which can cause great uncertainty and great hazards in the deepening of the well.

Q. Could a whipstock have been set at 4,100 feet and continued drilling through the whipstock?

A. Yes.

(Testimony of Paul Paine.)

Q. And by so doing save the cost of drilling the 4,100 feet above?

A. No, not necessarily. That is the uncertainty which a prudent operator would not have ventured with this well, with all the material which lay below in this old well.

Q. Do you exclude the possibility of a producer of nautral gas allowing a value for the 4,100 feet of casing?

A. You are getting back to the same question. If you permit me to recognize it was in this hole, I say your prudent gas operator would have elected to commence a new well from the surface.

Q. In arriving at a fair market value of the leasehold as testified to, have you also taken into consideration the price [908] at which the owner of the leasehold might be willing to sell, or did you just figure from the point of view of the buyer?

A. No, I assumed conditions of the meeting of a willing seller and a willing buyer, that is, a buyer who was willing and able to buy and a seller who desired to sell, but was not forced to do so, with both of those being reasonably informed of the facts.

Q. And that is the basis of your valuation, is it not?

A. Yes.

Q. That is the test you have applied?

A. Yes.

Q. Do you mean to state, Mr. Paine, a person, an operator owning this leasehold and having drilled this well and knowing the condition of the well, as he must have known it, would have insisted upon

(Testimony of Paul Paine.)

being paid the reasonable value of the well as part of consideration for the sale of this leasehold?

A. I do not know what he would have done.

Q. Put yourself in his position as a willing seller not forced to sell: would you have required it?

A. Desiring to sell.

Q. Desiring to sell, but not forced to sell; would you have required it if you were desirous of selling, but not forced to sell?

Mr. Bourquin: That is argumentative, your Honor, because it cuts the legal equation in half.

The Court: I think it is an argumentative question, hypothetical. [979]

Mr. Scampini: It is the test of fair market value, your Honor, a willing buyer and a willing seller.

The Court: There is no doubt that you could pursue that, but this particular question, I think, is both hypothetical and argumentative.

Mr. Scampini: Let me see. Perhaps I can re-frame it to meet the objection.

Q. In applying the test of fair market value that you did, Mr. Paine, did you place yourself or try to place yourself in the position of the owner of the leasehold and the well and assume that you were desirous of selling, but you were not forced to sell, and did you conclude that you would not require payment of the consideration for the reasonable cost of the well?

A. I would have considered the well to be worthless, aside from the physical equipment which was

(Testimony of Paul Paine.)

removable. We are talking just about the hole in the ground, not the boilers, the derrick, the pumps or the material which was salvageable.

Q. Assuming you to be the owner of this leasehold, you would have considered it to be worthless, is that right? A. On January 15, 1945.

Q. How about December 15, 1944, before the abandonment proceeding?

A. I know of no difference with respect to December 15.

Q. The hole on January 15 had been completely plugged up and [980] abandoned, had it not?

A. I do not know. I do not recall the date of the abandonment.

Q. Did you consider the hole as being an abandoned hole when you placed your values on these properties?

A. That made no difference to me.

Q. That made no difference to you?

A. No.

Q. For the purpose of arriving at your opinion that the well was junk and worthless, did you take any statements from any of the men who had worked on the well?

A. No, I did not. I relied on the driller's log of the well and the well history which had been supplied to the State Division of Oil and Gas, and the information which has been provided here.

Q. Did you discuss it with any of the representatives of the Standard Oil Company?

A. Not that I recall, not the condition of the well, no.

(Testimony of Paul Paine.)

Q. Did you obtain any information from the Standard Oil Company which you used in arriving at your figures and valuation?

A. No, I did not.

Q. Did you examine the cores of the Faria well?

A. No, I did not.

Q. Is the Standard Oil Company, a substantial stockholder of the Kern County Land Company, of which you are a director?

A. So far as I know, it does not own any shares in it.

Q. Is the Standard Oil Company one of the large lessees leasing substantial portions of the lands of the Kern County Land [981] Company, of which you are a director?

A. It is the lessee on important oil field properties with oil production of importance.

Q. Did you make it a point to obtain any information from the company's offices or the company's geologists or engineers, for the purpose of arriving at your opinion?

A. No, I did not.

Q. Or for the purpose of arriving at your conclusion that the well was useless?

A. No, I did not.

Q. Did you rely upon the geological findings and the conclusions of Professor Taliaferro in arriving at your opinion?

A. No.

Q. Do you disagree with the conclusions or findings of Professor Taliaferro?

A. No.

Q. Did you examine the report?

A. No.

(Testimony of Paul Paine.)

Q. Is it not true, Mr. Paine, that in your experience as an appraiser no satisfactory working formulas for the determination of land values on unproved prospective oil lands have ever been developed?

A. I think that is a reasonable statement.

Q. Is it not true that all unproved land values, or values of oil and gas leases, or royalty interests are affected at any given time chiefly by the following factors:

One, the known geological conditions of the territory.

Two, the leasing activity and competitive bidding for lands [982] in the neighborhood.

Three, exploration activities in the locality.

Four, the lease terms themselves.

A. All of that has a familiar ring.

Q. It comes from your book, doesn't it?

A. Yes.

Q. Did you consider your valuations on those bases?

A. Yes. Those are elements which came into my valuation.

Q. And you took all those factors into consideration?

A. Those which were pertinent.

Q. Were any of them not pertinent in this case?

A. I will have to look over them. Will you read them to me again?

Q. The known geological conditions?

A. Yes.

Q. Did you conclude that geologically the structure was unfavorable?

A. No, I did not.

(Testimony of Paul Paine.)

Q. Did you conclude that there was no leasing activity in this case in the neighborhood?

A. No, I had heard of leasing activity.

Q. Were there any exploration activities being conducted on the property?

A. There had been.

Q. Isn't it a fact that the exploration activities were in full progress on December 15 when the Navy took possession of the property—December 15, 1944?

A. I am not familiar with what was happening there on December 15. I relied on January 15.

Q. Of course, on January 15 the Navy had already taken possession [983] of the property?

A. But, so far as I know, on December 15 it was all over. There was nothing going on.

Q. Let us see if I understand you, Mr. Paine. You mean there was nothing going on with respect to drilling, or nothing going on because the Navy had taken the property?

A. No, the pipe stuck in the well and, as far as I know, there was no drilling activity going on.

Q. In your experience as an engineer—and I concede you are one of our leading ones on the subject—Mr. Paine, is it not a fact that a fish stuck in a well or a fishing job is not uncommon in the oil business or natural gas business? A. Quite.

Q. It happens every day in the business, doesn't it? A. Yes.

Q. That does not mean the well is going to be abandoned merely because something like that happens? A. No.

(Testimony of Paul Paine.)

Q. It may take a little time to go around it, but you can get around it, can't you?

A. Yes; seldom weeks and months elapse without any work on it.

Q. Depending on the conditions, is that right?

A. Yes.

Q. Isn't it a fact that in the Honker Bay well drilled by Standard Oil three and a half miles away they had twelve whipstocks before they finished the well?

A. I am not informed on that.

Q. Have you had any information on it?

A. No.

Q. Would you dispute the statement if I made it?

A. No. [984]

Q. Is it not true, Mr. Paine, that based upon your experience, oil and gas leases, unproved but with good geology, may rapidly rise on the market from a nominal price of \$5.00 and \$10.00 to as high as \$200 an acre upon news being circulated in the territory that a test well is to be drilled in the vicinity?

A. That is a fair statement, particularly with respect to oil. The general level of the oil lease prices is materially higher than gas lease prices.

Q. Will you concede, Mr. Paine, that natural gas under certain circumstances is as valuable as crude oil?

A. You can't compare the two. Natural gas leases are very valuable if they are situated properly.

(Testimony of Paul Paine.)

Q. Gas fields can be worth many, many millions of dollars under certain circumstances, is that right?

A. Yes.

Q. Would you try to capitalize the gas value of the Rio Vista field in millions of dollars?

A. It extends into millions of dollars.

Q. How about McDonald Island?

A. Not so much.

Q. Not so much, but it would also extend into millions, wouldn't it, though not so many million?

A. Many less. Rio Vista adds up to all the gas fields in California, put together.

Q. Is it not true that if discovery were to be reported to have been made in the test well being drilled in the vicinity that the values of the leases on property adjoining or approximately near the test well would rise very rapidly? [985]

A. That would all depend on the circumstances.

Q. Could it so happen?

A. It is possible.

Q. Do you know of any instance where it has happened in California?

A. Where it has happened?

Q. Yes. A. Yes.

Q. Is it not true, Mr. Paine, that generally speaking, in California royalty interests reserved on the oil and gas leases by the owners of the land in an area or structure which is in the course of being tested by the drilling of the exploration well are usually considered to be worth by the industry and dealt in at from \$50 to \$100 per royalty acre?

(Testimony of Paul Paine.)

A. That applies particularly to oil.

Q. How much difference is there between oil values and gas values in an incident the like of which I have just related?

A. I would say four or five to one; that is, the relative values of gas interests of the same character would be one quarter or one fifth, or something of that order of magnitude.

Q. Is it not true that prices of such royalty interests would go much higher if any kind of a promising indication were reported to have been found in the test well?

A. They frequently do.

Q. I take it, then, Mr. Paine, that your valuations of the subject properties are based entirely upon your assumption that no promising indications were obtained in the course of drilling the Faria well?

A. That is a far statement. [986]

Q. With respect to the transactions that you have referred to as having taken place in northern California, which are transactions you considered as one of the factors in arriving at your opinions, will you state, Mr. Paine, whether it is not true that in each and every case of the transactions referred to by you you were dealing with a situation where an oil or gas operator was trying to lease properties from landowners for the purpose of putting the leases together on some structure that he suspected might be there, and thereafter testing that structure?

A. Generally.

Q. Can you tell us of an incident or a transaction where the oil operator or the gas operator

(Testimony of Paul Paine.)

went out and got together a group or block of leases from the landowners and paid the landowners \$5.00 or \$10.00 an acre bonus, plus the royalty, and then having gotten the leases together in the form of a community lease, proceeds to drill a well, and before completing the well sell the leases in the block to another operator?

A. I can't answer that, because I do not know of any situation where a block was gotten together in which the gas operator paid as high as \$5.00 to \$10.00 an acre for all the acreage.

Q. Do you know of any block gotten together by the operator where the operator paid nothing originally to the landowners and thereafter sold the block to another operator?

A. Transactions of that kind have taken place. I am thinking [987] —no, I do not know of some definite one.

Q. I take it, then, it would be a fair statement to say that the transactions referred to by you were transactions occurring in the initial stage of the promotion of a drilling job or getting together of a block of leases?

A. No, the transactions also relate to the availability of property where wells have been drilled, have had gas blowout, and then have been available for further acquisition and have been abandoned and quitclaimed by the operators.

Q. I think I understand you, Mr. Paine. I take it, then, that such properties that you now refer to would be properties which had originally been

(Testimony of Paul Paine.)

leased by the promoter and gotten together on the original structure, is that right, and might still be available? A. Yes.

Q. Would they not normally be off the structure in such a case? A. No, not necessarily.

Q. But reasonably so, you could say that they would be off the structure?

A. No, they are right on the structure when a well has been drilled and had a large blowout of gas.

Q. Do you know of a single transaction or any transaction in northern California where a landowner owning property on a structure which was in the course of being tested for natural gas and in the course of which a blowout occurred of natural gas, and then the landowner sold his lease or royalty interest on his property?

A. No, I do not. [988]

Mr. Scampini: I think that that is about all. That is all. Thank you.

Mr. Bourquin: Nothing further from Mr. Paine. Thank you, Mr. Paine. The Government rests, your Honor.

Government Rests

Mr. Scampini: We have a very short rebuttal, if I may proceed, your Honor.

BYRON NORRIS

called as a witness by defendants in rebuttal; and having been previously duly sworn, testified as follows:

Q. (By the Clerk): State your name for the record, please? A. Byron B. Norris.

Direct Examination

Q. (By Mr. Scampini): Mr. Norris, as the engineer in charge of drilling the Faria well, have you any knowledge of the penetration of any fault in the course of drilling the Faria well?

A. I do not have any knowledge.

Q. Would the fact that the well penetrated a fault in the course of it being drilled reflect itself in any way?

A. Yes, it would reflect itself in the cores and also on the Schlumberger.

Q. Did you find any evidence of any such faulting in any of the cores? A. No.

Q. Do you find any evidence of any faulting on the Schlumbergers? [989] A. No.

Q. Is it your opinion that the well did not cross a fault in the course of drilling the well?

A. It is my opinion that it did not cross a fault.

Q. Have you formed any opinion based upon your knowledge of the geology and the information that you had of the drilling of the well as to whether or not the cretaceous formation had been contacted prior or above 4,975 feet?

A. I do not believe the cretaceous formation was ever contacted in the Faria No. 1 well.

(Testimony of Byron Norris.)

Q. Is it your opinion that you were bottoming in the Martinez formation?

Mr. Bourquin: I submit this was all gone into with the witness on his prior examination to the same effect. I do not believe it is proper rebuttal.

Mr. Scampini: It has been forcefully denied by Professor Taliaferro, and I think I am entitled to cover the matter in rebuttal.

The Court: Of course, you are entitled to take up any new matter.

Mr. Scampini: It is not new matter.

The Court: If the witness is reiterating a statement he made, it is not proper redirect. I am not sure about that particular subject. If it is not too lengthy, I would be inclined to admit it, because it is too difficult to go back [990] and find all the statements the witness made on direct.

Mr. Bourquin: I thought he said the same thing before.

The Court: It will not do any harm. I will allow it.

The Witness: Will you repeat the question?

(Question read.)

A. It is.

Q. (By Mr. Scampini): Have you any opinion as to how many feet of Martinez formation had been penetrated at 4,975 feet?

A. It is my opinion that only a few feet, possibly a hundred feet. I base that on the fact that we would expect the McDonald Island sand, which

(Testimony of Byron Norris.)

I believe we contacted in the top of the Martinez.

Q. Have you any opinion as to how many feet of Martinez formation underlay the Faria well below 4,975 feet? A. I have.

Q. What is your opinion?

A. May I step to the map here? This map will do. We have several ways of approaching that, other than what has been used in the well.

Q. This side, Mr. Norris, so the jury can see what you are doing.

A. Take this map here, and this being the well, the area down between the well and the town of Martinez has been gone into at considerable expense in Ried's *Geology of California*. At this point he places the thickness of the Martinez at 1,700 feet through the area in which the well is located. J. A. Taft has made a survey. That survey was used [991] by Professor Taliaferro in making his section which is found in Bulletin 118. In that survey Mr. Taft gives the thickness of the Martinez in this very area at 700 feet.

Moving over to the field to the right, the Rio Vista, we find the thickness of the Martinez at 1,257; in McDonald Island we find a thickness of 1,590 feet. Those figures are taken from Bulletin 118.

Q. And what is Bulletin 118?

A. It is a Division of Mines bulletin of the geology of California. It was pointed out the thickness of the Martinez would thin in this direction, but I would like to point out in the Rio Vista

(Testimony of Byron Norris.)

area it is much thinner than McDonald Island—and in my opinion it would thicken in this direction, rather than thinning. If you take a section right through the well—here is 1,500 feet here, 700 here, and 1,590 here, I think it gives a fair idea of what you might expect as the thickness of the Martinez at the well location.

Q. Mr. Norris, you have examined the map of Professor Taliaferro, which is U. S. Exhibit W, have you not? A. I have.

Q. Do you agree with Professor Taliaferro's placing of the axis of the anticline, which he says is approximately 2,500 feet from the location of the Cal Bay well? A. I do not.

Q. Have you formed any opinion as to whether or not he is in error on that conclusion?

A. I believe that he based his conclusion mainly on the fact that he was not able to find any [992] southwest dips at or near the well.

Mr. Bourquin: Your Honor, I move that the witness' answer go out as not responsive, expressing an opinion as to what the other witness based his opinion. I think the jury can be the judge of that.

The Court: I think that is right, Counsel.

Mr. Scampini: Yes, your Honor. I think that is right.

Q. Now, Mr. Norris, will you please state your reasons for concluding that the axis of the anticline was at the location selected by you for the drilling of the well?

(Testimony of Byron Norris.)

Mr. Bourquin: I object to this, your Honor, as not rebuttal. That was the very purpose of this witness, as I understood it, being called in the first place, and that subject was fully gone into.

The Court: I think counsel's objection here is good. The witness delineated at considerable detail, if my memory serves me correctly, where the axis was and why he fixed it there. It does not do any good to repeat it. The vice of that is the Government could put on their men and they could repeat their statements again, and we would never be finished with the case. I think that is a valid objection. I will sustain it.

Q. (By Mr. Scampini): Mr. Norris, just one more question or two, perhaps. With respect to the condition of the well after the blowout—you are familiar with the condition of the [993] well after the blowout, aren't you? A. Yes, I am.

Q. You know or knew at what depth the casing had collapsed, do you not? A. Yes.

Q. You knew exactly what the condition of the casing of the well from the surface to the place where the casing had collapsed was, don't you?

A. I do.

Q. At what depth do you state the casing collapsed?

A. Well, the casing collapsed at approximately——

Mr. Bourquin: Your Honor, I do not think this is proper rebuttal. What is this the rebuttal to?

Mr. Scampini: The condition of the well insofar

(Testimony of Byron Norris.)

as it can be used by any prospective buyer of the leasehold, in rebuttal to the testimony of Mr. Paine and Mr. Armstrong to the effect that the well could not be used.

Mr. Bourquin: If that is the purpose and it is limited to that and confined to that, I will withdraw the objection.

(Question read.)

A. (By the Witness): I believe I started to answer that. So far as I know, the casing collapsed approximately at the window. The true condition of the well is, the drill pipe is reported to be topped at 4,134, which would leave approximately 4,100 feet of effective hole. That hole is cased with new 7-inch casing.

Q. In your opinion would any prospective gas operator acquiring or intending to acquire the leasehold estate of Cal Bay [994] Corporation, use the Faria well down to 4,100 feet for the purpose of continuing drilling?

A. Yes, and may I explain?

Q. Yes.

A. It so happens that in the production of gas it is not necessary to have a large liner or casing through the gas zone. In Rio Vista they use from five and a half inch down to three and a half inch, so that it would be perfectly possible to put a window in this pipe and drill on down to the objective, which should be about 4,970, the gas sand that was tapped, and complete that well, and I

(Testimony of Byron Norris.)

believe any prudent operator would consider the fact that he had new casing and an effective hole to 4,100 feet in considering this property.

Mr. Scampini: No further questions. [995]

Cross-Examination

By Mr. Bourquin:

Q. On that subject, do you know how long the Cal Bay people required to get out of the first hole that was messed up and to arrange and place the whipstock and start over again at forty-one hundred feet and something?

A. I don't know the exact time, no. I have it in the log.

Q. Well, look and see.

A. They did considerable piping.

Q. Look and see if they didn't mess the old hole, the first hole, break down in about August, August 15, and worked into whipstocking until October 15 before they commenced drilling the new whipstock hole.

A. My record shows they started the fishing job August 22, 1944.

Q. When did they stick in that hole?

A. A three-inch drill pipe was pulled in two.

Q. After they stuck? A. Yes.

Q. They pulled the drill pipe in two?

A. August 22, 1944.

Q. Was that the date of sticking or the date of pulling in two?

A. That is the date recorded here that they pulled it in two.

(Testimony of Byron Norris.)

Q. What is the date of last drilling shown in that hole?

A. I have a note here, August 28, drilled at 4,811.

Q. They stuck, then pulled in two, and then they went through all of the procedure to go out and whipstock and start over again from 4,100, did they not?

A. Yes. They are two separate jobs there. The fishing job was the recovery of the three-inch drill pipe that was stuck on the bottom of [996] the casing and then they had to put a window in.

Q. Then they had to start over again at a higher level? A. Yes.

Q. What level was that window?

A. I have a note here, "Milling window at 4,176."

Q. When did they accomplish that and get back to drilling from the window?

A. My log reads, "October 18 ran east and whipstocked, drilling ahead, making six and a quarter inch hole."

Q. Approximately two months, October 18—August 18 to October 15?

A. That is not exactly true, because the well was idle in September, from September 5 to September 29, according to my record. That was at the time of the change of the one-man crew to the three-man crew—one crew to three crews.

Q. When they messed the first hole they quit, the ones that were working, is that it?

(Testimony of Byron Norris.)

A. I don't know about that. The well was shut down for a period of time.

Q. Then they got back in——

Mr. Scampini: I desire to take exception to counsel's reference that they messed the hole. There isn't any messing of the hole. This accident that happened in the course of drilling the well would happen everywhere. The continuous reference that they messed the hole would seem to infer that they did it on purpose. [997]

Mr. Bourquin: I think the term speaks for itself. I am only asking the question so we can appreciate the time.

The Court: What is the next question?

Q. (By Mr. Bourquin): During that interval between the sticking in the old hole and the inauguration of the new hole, they brought in specialists, whipstock people, and others, didn't they?

A. Yes.

Q. They added to the usual expenses, didn't they?

A. Well, a fishing job usually is expensive. As far as I know, there was only one expert brought in there to do the fishing.

Q. On the question of the geology that you referred us to the map up here, you are telling us that from your studies of the geology there is some reason to disagree with the conclusions voiced by Dr. Taliaferro?

A. Yes.

Q. When did you come to the conclusion, Mr. Norris, about the presence of those formations and

(Testimony of Byron Norris.)

the depths of them that you have announced to this jury this morning?

A. Why, I had some of that data at the time I wrote the original report; some of it has been published since.

Q. Lett me read from your original report on that subject to you, April 20, 1942, page 2——

A. Was it April 20?

Q. Yes; April 20, 1942. A. All right.

Q. At the bottom of page 2, commencing with the paragraph I [998] quote:

“It is only in recent years that completion of Tracy, 1935, McDonald, 1936, Rio Vista, 1936, gas fields has caused the survey of the area for the production of gas. The gas production from these fields comes from the cretaceous formation.”

Have I read it correctly, Mr. Norris?

A. You have.

Q. That was your opinion of the matter at that time?

A. That was my opinion at that time. I might explain——

Q. Let me ask you, that was after you had studied the area for the purpose of projecting an exploration over there and reported the matter to the Corporation Commissioner to get permission to sell stock? A. That is correct.

(Testimony of Byron Norris.)

Q. Look at page 6 of that same report, the paragraph at the top of the page:

“The production from the cretaceous formation may accumulate in this structure from either north, south or east, so that a very extensive drainage is indicated. The presence of three producing gas fields from the cretaceous formation to the east of this area gives considerable interest to the gas possibilities of this structure.”

Have I read that correctly?

A. Yes, you have.

Q. That was your view of the geology at that time, was it?

A. It still is, as far as some of those fields are concerned. [999] I think you are unfair, Mr. Bourquin. Let's read all of it.

Q. Which are the three fields that you refer to, to the east? Do you not refer to the same three you have referred to in the earlier passage, Tracy, McDonald and Rio Vista?

A. Yes, Tracy is still——

Q. Let's point those out. Tracy is this little green field down here, isn't it? A. Yes.

Q. In the relative location there? A. Yes.

Q. McDonald Island is the red field over here to the east? A. Yes.

Q. Rio Vista also being red, the one to the northeast? A. Yes.

Mr. Bourquin: That is all.

(Testimony of Byron Norris.)

Redirect Examination

By Mr. Scampini:

Q. Mr. Norris, isn't it a fact that on April 20, 1942, all information available to the geologists with respect to the production sands of Rio Vista were thought to be the ones you accepted to be correct?

A. That was my opinion at that time.

Mr. Bourquin: That might be the witness' view, but we object to that as calling for an opinion and conclusion. He might accept any view. I ask the answer stand out.

The Court: It may go out.

Q. (By Mr. Scampini): Was that your opinion at that time? A. It was. [1000]

Q. Upon what factor is based your opinion of the information available to you?

A. The data available at that time. I might say that Bulletin 118 was not out at the time. Neither were the McDonald Island or Rio Vista written up for the Division of Oil and Gas.

Q. When were they written up and when did Bulletin 118 come out?

A. Bulletin 118 came out in 1943. Rio Vista was written up in 1944. I don't know about the McDonald Island date. It was written in Bulletin 118, though.

Q. Up to the time of Bulletin 118 coming out, is it not true that all information respecting the geology of Rio Vista and McDonald Island were kept secret?

(Testimony of Byron Norris.)

Mr. Bourquin: I object to that as calling for a conclusion of the witness. He is not qualified. It appears now he has studied only from published reports. I don't think it is proper redirect examination and I think it calls for an opinion and conclusion in a field for which no foundation has been laid.

The Court: Yes. It would open up a collateral matter that might be endless as to whether data was or was not secret in this case.

Mr. Scampini: No further questions.

Mr. Bourquin: That is all.

Mr. Scampini: I will call Mr. May. [1001]

The Court: Would you prefer to take the recess at this time? Is this a short witness?

Mr. Scampini: Well, I think I would like to take a short recess, then I have only about two short witnesses and can proceed to argue the case this afternoon.

The Court: Very well. We will take the morning recess at this time. Please bear in mind the admonition of the Court.

(After Recess.)

WILLIAM HERBERT MAY

called as a witness on behalf of the defendants in rebuttal; and having been previously duly sworn, testified as follows:

The Clerk: You have heretofore been sworn. Will you state your name for the record?

A. William Herbert May.

(Testimony of William Herbert May.)

Direct Examination

By Mr. Scampini:

Q. Mr. May, can you state where you were on the morning of November 29, 1944, at or about the hour of ten-thirty to eleven a.m. of that day?

A. I was at the Faria well.

Q. What were you doing at or about that time; that is the question.

A. Trying to bring the well under control.

Q. What were you doing with respect to trying to bring the [1002] well under control?

A. Closing the gate and pumping in heavier mud.

Q. Were you there when the well first began to blow out?

A. I was.

Q. What were you doing?

Mr. Bourquin: Your Honor, I think this has all been covered. It is not proper. There is no objection to the witness coming in to meet the objection of the other testimony that he was not there. Now, if he is going into what he was doing, I object to that.

Mr. Scampini: I am merely leading up to the point whether or not he was there.

The Court: All right.

Q. (By Mr. Scampini): Had you been there all morning?

A. Yes.

Q. When did you leave the premises that day?

A. Around six o'clock, supper time.

(Testimony of William Herbert May.)

Q. Do you know who were working of the crew day? A. Yes, I do.

Q. Were they present at the time of the blow-out? A. Yes.

Q. Who were they?

A. The driller's name was Parks; there was a man by the name of McBride, Marshall, Morris and Enwall.

Q. Was Mark Beaver anywhere near the premises?

A. Mark Beaver was the fireman. [1003]

Q. Did he attend to the boilers? A. Yes.

Q. Approximately how far from the derrick were the boilers located?

A. Oh, one hundred fifty to two hundred feet.

Q. In respect to the condition of the well after the blowout, are you in a position to state, or give an opinion as to whether or not the condition of that well from the surface to 4,100 feet was such that a prospective buyer of that leasehold could use the same? A. I am.

Q. What was the condition?

A. The condition of the well down to 4,158, which was the top of the window, was in very good, perfect condition.

Mr. Scampini: No further question.

Cross-Examination

By Mr. Bourquin:

Q. Mr. May, was that the same Marshall and Morris who were in court and who testified?

(Testimony of William Herbert May.)

A. I was not here the day they testified.

Q. Was it Thurmone Marshall? A. Yes.

Q. And what was Morris' name?

A. I don't know. They called him Blackie Morris.

Mr. Bourquin: Blackie Morris. That is all.

Mr. Scampini: No further questions. The defendants rest.

(Defendants rest.) [1004]

(The following motion was made by Mr. Bourquin out of the presence of the Jury):

Mr. Bourquin: Your Honor, in connection with the motion we made the other day relating to the claim for severance damage, I would like to add a further basis for that motion, a kind of complicated one, the ground that the properties of the Cal Bay leased in 59 and 58 were not taken at the time of the taking of the other parcels, most of those were severances claimed. The two dates were, at the instance of the other side by stipulation, separated, so we have a taking of most, if not all of the parcels where severance is claimed, that is, that were involved in the taking in July, and no taking of the property of 58 and 59 until the following January. That, however, is not true of the Alvernaz parcel, because we did not take any of that. They have a severance claim, and their claim is related by the evidence to the taking of parcels 58 and 59, but as the others where it is not severed, like the little corner that came out of Geraldine Faria's property,

and the claim of Mary Faria—was it Mary? I am not sure—some of them have that involvement.

(Discussion.)

The Court: Suppose you see if you cannot work out a form of verdict as to the severance damage that would limit that.

Mr. Bourquin: We will work it out. [1005]

The Court: I would rather hear your arguments to the Jury on the matter of severance damage. I am not sure in my own mind whether the question there has to do with the weight of the evidence or is the sufficiency of it. It is a rather close question. It would be better to resolve the doubt in favor of submitting the matter to the Jury, because if there is a reasonable question as to whether or not your objection goes to the sufficiency of the evidence rather than the weight of it, or *visa versa*, I think perhaps the doubt should be resolved in favor of submitting the matter.

Mr. Bourquin: All right, your Honor, we will prepare it.

The Court: Is there anything else, Counsel?

Mr. Scampini: No, your Honor.

The Court: We will recess until two o'clock.

(Thereupon, at 2:15 Counsel for the defendants made the opening argument on behalf of the defendants, followed by the reply argument of the Government by Mr. Bourquin, after which an adjournment was taken until tomorrow, *Thursday*, February 7, 1947. [1006])

Friday, February 7, 1947

(Counsel for the Government and the Defendants resumed their arguments, and at 2:00 p.m. the Court instructed the Jury as follows):

The Court: Ladies and gentlemen of the Jury, it is very obvious to the Court the members of the Jury have been commendably attentive during these past several weeks to the evidence presented here. Many witnesses have testified, and some of the matters which were the subject of the testimony of the witnesses were perhaps somewhat difficult. The Jury in the Federal Court and the Judge are in a manner of speaking a team whose objective is to secure justice. Each member of the team has a part to play in that process. The Jury is the judge of the facts of the case. Ordinarily the Court is not permitted to invade the province of the Jury in determining the facts of the case. The Judge traditionally is empowered to advise the Jury as to the law to guide them in arriving at a just decision on the facts. The Jury has to take the law the way the Judge gives it to them. It sometimes happens that juries do not like the law, but be that as it may, it is the duty of the jury to accept the statement of the law that the Court gives. Otherwise the process of justice might very easily be abortive. Sometimes laws are unpopular and juries do not like to accept the statement that that is the law. [1007] Nevertheless it is their duty to so do.

Ordinarily the Judge does not comment upon the evidence in the case. I intend a little later to make some comment concerning one phase of the evidence in the case, and when I do so I will give the Jury appropriate instructions with respect to that matter,

During the course of the trial of the case the Judge has been required to rule in connection with legal matters. In doing so the Court has made comments perhaps with respect to the law. Likewise the Court has propounded some question to witnesses in this case. In doing so the Court was not intending to convey to the Jury any intimation as to what the Court thinks the verdict of the Jury should be, but did so only in carrying out the power, and indeed the duty of the Court to supervise the administration of the trial and to expedite it.

Now, ladies and gentlemen, this is a condemnation case. As I told you when you were impaneled, you were going to be appraisers, twelve of you, and our hope is that by the combination of twelve minds you may do as good, if not a better job, than one mind may do in coming to an appraisal. Personalities are not involved in a condemnation case. It does not make any difference who owns the property. This is a proceeding, as the lawyers say, in rem. It only concerns the property. Whether a man or a woman or a corporation or a [1008] group of people or a white man or a red man or a colored man owns the property is immaterial. The only question is what is the market value of the property. You may only consider the personalities involved insofar as you may be called upon to weigh the testimony of

the witnesses who are connected with the property who have testified. Other than that you are not concerned with people but only with property.

There are some general rules that are applicable to all civil cases which you may apply here in evaluating the testimony of the various witnesses. In the first place, you must exclude any sympathy or any prejudice that you may have or that may have been caused to come into your minds as the result of the trial of the case. To do so would be again to block the accomplishment of justice. Whether or not you believe the witnesses who have testified in this case and the weight to be attached to their testimony respectively is a matter for your sole and exclusive judgment, except that the Court may have one comment to make, to which I have referred, at a latter time.

A witness is presumed to speak the truth. We start out with the idea that when a man or a woman steps up into this chair that he or she is going to tell the truth. However, that presumption may be negatived by the manner in which the witness testifies by the character of his testimony, by contradictory testimony, or by the motives of the [1009] witness. In passing upon the credibility of the various witnesses it is your right to reject the whole or any part of the testimony of a witness or to discard and reject the whole or any part of it. If it appears to you and it is shown that a witness has testified falsely upon any material matter, you should distrust his testimony in other respects, and in that event you are wholly free to reject all of the testimony of the witness.

I have already told you that this is an action in condemnation. It was brought by the United States for the purpose of acquiring a large tract of land for the Navy for the purpose of installing an arsenal project in connection with the prosecution of the war. Now, in cases of condemnation, contrary to the usual procedure, while the United States *if* the plaintiff and brings the suit to condemn the property, when the owner applies to the court for a determination of the value of his property, he in effect becomes the plaintiff, and there then rests upon him the burden of going forward with the case, and he has the burden of proving the value which he asserts by a preponderance of the evidence.

The preponderance of the evidence means that the testimony on the part of the defendants as to the value of the land or property or interest taken must have greater weight in your opinion and more convincing effect than that of the plaintiff. If that burden of proving the value of the property by a [1010] preponderance of the evidence is not sustained, and if you find that the evidence is evenly balanced, and the preponderance to which I have referred does not exist in favor of the defendants, then the defendants must be deemed to have failed to have maintained that burden of proof. The preponderance of the evidence does not necessarily depend upon the number of witnesses who testify, but rather upon the character of the testimony and its probable truth or falsity. If one party to a suit has twenty witnesses and the other party has one, it still may be that the preponderance of the evi-

dence is in favor of the party who presents only one witness, because his testimony, that is, the testimony of the one witness, by virtue of its character, may be so much more truthful than the testimony of the twenty witnesses on the other side that the finder of the fact, the Jury in this case, may conclude that the preponderance is in favor of the side which produced only one witness. I cite that to you only to the point of making clear to you that numbers have nothing to do with the weight of evidence.

In determining the credibility of the various witnesses and the preponderance of the evidence you can take into account the following elements: the circumstances under which the witness testifies, his demeanor and manner on the stand, his intelligence, the connection or relationship which he bears to either party by employment or otherwise, the manner in which [1011] he might be affected by your verdict, the extent to which he is contradicted or corroborated by other evidence, if at all, and any other matter which reasonably sheds light upon the credibility of the witness. It is your duty to disregard any testimony which the Court has stricken out or any testimony to which an objection has been sustained. The attorneys have argued this case, as is their right and indeed their duty. In doing so they have referred to evidence in the case. If you find any discrepancy between the evidence testified to by the witnesses and that stated to be the evidence by the attorneys in their arguments, you will disregard the statements of the attorneys and take into account only the evidence as it was given by the witnesses.

In a condemnation case such as this you are not concerned with why the Government took this property. The United States has the power and the right in the public interest to take private property for public use at any time and in any place as the Government so decides, and every citizen owns his property subject to that superior power of Government to take it for public needs. If that were not the law, as I explained to you at the time of your impanelment, it would be impossible to have public projects. We could not have roads. We could not have public buildings. We could not have parks. We could not have all the vast number of projects devoted to public use unless there was a superior power which had the right to take private property for those purposes. [1012]

Of course, the power of eminent domain was exercised to a very great extent during the war. The Government took huge numbers of parcels of land in the prosecution of the war as the needs of the moment dictated. The warfare that we were engaged required the taking of innumerable kinds of civilian property for conversion into structures of a military or semi-military character. The extent and the exercise of such powers is not a matter of judicial concern, neither mine nor yours, but what compensation shall be awarded and the rules and standard applicable there to is a judicial function.

It was correctly stated to you by the attorney for the defendants that the Constitution of the United States provides that when private property is taken by the Government for public purposes it is a con-

stitutional requirement that just compensation be paid to the owner, and that is equally applicable in time of war as it is in time of peace. It is therefore not your function to decide whether the Government has acted wisely or unwisely in taking this or any other property. It is not your function in effect to say, "Well, I'm going to make the Government pay for this property because I think they should pay plenty for it because the Government took it." Nor is it your duty to penalize the defendants or any of them if, forsooth, you do not like them or if you do not like the kind of business they or any of them were engaged in. That likewise is not your function. The only function that [1013] you have is to determine the just compensation for the property itself and the interest taken to be paid to those who were entitled to receive the same.

Now, just compensation means the equivalent in money of the interest taken so that the owner may be in the same position peculiarly he would have occupied had the taking not occurred. Just compensation in condemnation is determined on the basis of the market value of the property or interest taken at the time of the taking by the Government. Thus the market value becomes the measure of damage. The test is not value for special purpose. It is the fair market value in view of all the purposes to which the property or interest is naturally adaptable. It is the highest value in terms of money which the property or interest will bring if exposed to sale for cash in the open market in the community in which it is situated, with a reasonable

time to find a purchaser buying with full knowledge of all the uses and purposes to which it is adapted and for which it is capable of being used, the seller not being required to sell or the buyer not being required to buy at the time.

In arriving at the amount of the market value of the interest taken by the Government in this case, that is, the amount in dollars and cents of the market value, you are not to consider what the interest taken was worth to the Government, for to allow that element to enter into your deliberation [1014] would be to make the Government's necessity the owner's opportunity. In other words, neither need for selling nor need for purchasing should be considered or should be taken into account. The location of physical characteristics, the advantages and disadvantages of the property or interest which is the subject of the condemnation are proper matters to shown in evidence in determining market value. These are matters which naturally would be taken into calculation in forming a public and general estimate of the value of the property or interest taken and influence the minds of the sellers and buyers with relation thereto. Accordingly, to the extent that such matters are shown by the evidence, the Jury may properly consider the same in arriving at its conclusion as to the amount of the just compensation which should be paid.

You are not to consider what the property or interest taken was worth to the defendants or any of them or to the owners of the leasehold or to the owners of the royalty interest for speculation or

merely for possible usage, or what the defendants claim the property or leasehold interest or royalty interest was worth for such purpose, nor what it would be worth to the Government for military purposes or for other purposes. You are not to consider the price that the property or interest would sell or lease for under special or extraordinary circumstances, but only the fair market [1015] value if offered in the market under ordinary circumstances for cash, a reasonable time being allowed to make the sale.

The defendants in this case are not entitled to make a profit because the interests which they claim they have were taken from them by the Government. By that I mean that they may not obtain more compensation by reason of the condemnation proceeding than they would obtain as the fair market value of such interest if there had not been a condemnation proceeding. The Government's wartime necessity for the use of this property, for the particular purpose standing alone, cannot be considered in estimating the value of the property taken. Demand created by wartime necessity cannot be considered in estimating the value of the interest taken. Future income or speculative productive value contemplated is not a measure of condemnation value. Profits which might be deprived from devoting the property to a particular purpose depends so much on conditions that cannot be foreseen that they have no competency. Compensation cannot be awarded for loss of business. The mere fact that a business is conducted on a property which has been taken under

the right of eminent domain is interrupted or destroyed by the taking does not constitute a taking of property or interest for which the owner is entitled to compensation. Compensation is to be awarded for the taking of the property or interest itself as distinguished from any activity or business thereon carried [1016] on.

The title to the real estate as a whole is called in the law the fee simple estate, and the Government, when it took this property, took the fee simple estate. It took the entire title in and to the entire property here involved. It paid the defendants for the whole value of the property taken. But there was by agreement reserved between the defendants and the Government the right to have determined the so-called mineral value or right in the property.

In this case some of the defendants are owners of leasehold interests, that is, they are lessees under leases, and others are owners of the reversion. They are or were at least at the time the Government took owners of the reversion that is, they were the landlords and they had reserved to themselves, I think the counsel stated, a one-eighth interest in any minerals that might be discovered or produced upon the property. That means, then, ladies and gentlemen, that both the owners of the leasehold, that is, the lessee, and the lessor have a separate and distinct estate or interest in the mineral rights if there were any in these properties, and each of them is entitled to have fixed by the Jury the fair market value of their respective interests, if there was any fair market value attached to their respective inter-

ests. The sum of these two values is the full value of the mineral rights taken. Because you evaluate separately the interest [1017] of the lessee and the interest of the lessor does not mean that you can thereby award any greater sum in total than you would award if you were making an award for the combined interests of the lessor and the lessee. You start out with one hundred per cent. The lessee here had $87\frac{1}{2}$ per cent interest in the mineral rights. The lessor had $12\frac{1}{2}$ per cent. You can evaluate the $87\frac{1}{2}$ per cent and you can evaluate the $12\frac{1}{2}$ per cent, and when you get through your sum total cannot be any more than if you had started out by evaluating the one hundred per cent.

Now, the market value of these interests that you are to endeavor to fix, if you find that they have any market value, is as of the date of the taking by the Government. The Government took possession of Parcels 57 and 64 on July 24, 1944, and the market value of the interest taken in these parcels is to be determined as of that date. The Government took possession of Parcels 58 and 59 on January 15, 1945, and the market value of the interests taken in these parcels is to be determined as of that date.

One other matter, ladies and gentlemen, before I come to the matter of the opinion testimony. I have already instructed you that you are entitled to evaluate the rights of the lessor and the lessee separately subject to the limitations which I have stated. That means that mineral rights, if there be such here, are property which are subject to the payment of just compensation in the event of [1018] condemnation.

In this case, ladies and gentlemen, as happens in many of these condemnation cases, so-called expert witnesses have testified as to value. The opinion of a witness as to the market value of property or interest may be good, it may be bad, or it may be indifferent, depending upon how well qualified the witness may be to express the opinion which he gives. You are not bound to accept the opinion of any witness, and that includes as well the owner of the property, who by law is entitled to give his opinion as to its value. You must determine the facts for yourselves, and in so doing it is your province to weigh the testimony of each witness who has expressed such an opinion with reference to all the circumstances surrounding not only the property or the interest taken in itself but the familiarity of the witness with the property, and to determine from all such circumstances how well qualified the witness may be to express a true opinion of market value.

You may in your discretion reject the testimony of any witness who has expressed such an opinion if it appears to your satisfaction that such an opinion is not based upon such a thorough knowledge of all the facts and circumstances relating to the property or interest taken as to enable him to express a true opinion as to market value.

Sales of similar interests of mineral rights in proximity to the property here involved may be considered by you in judging of the weight of the testimony of expert witnesses. You [1019] your-

selves are to determine the just compensation to be awarded in the light of all the facts and circumstances, including your conclusions resulting, whatever they may be, from the testimony of the expert witnesses. In estimating the market value, and keeping in mind the testimony of the expert witnesses, you are permitted to exercise your own individual judgment as to values, particularly upon subjects within your own knowledge, that you acquired through experience and observation. You have the right to exercise, in other words, your own common sense in determining the value of the interest taken.

Ordinarily, ladies and gentlemen, the court, as I stated to you before, abstains from expressing opinions as to the weight of the evidence. However, due to the somewhat apparent complexities of this case, and in order to be of assistance to the jury in the proper administration of justice, I believe it is my duty to make the following comment to the jury: In the opinion of the court the values fixed by the expert witnesses produced by the defendants in this case appear to the court to be so exaggerated as to make the testimony of those witnesses incredible. The opinion that I have expressed is just the opinion of the court. A Federal judge is permitted to make such a comment to the jury. The jury is not bound by the opinion of the court. The opinion is expressed as a part of the instructions as to the law for such aid as the jury wishes to make of it in determining the factual question. [1020] The jurors individually and

collectively are entitled to disagree with the opinion of the court. You may have your own opinion and you can come to it. You are not bound in any manner in making a finding in accordance with the view expressed by the court. The reason why the court has expressed the opinion is that it appears to the court that there is no factual basis presented in the testimony of the expert witnesses for the defense upon which the opinion of value given by them can be said to rest.

Prior to the taking of the land in this case, ladies and gentlemen, the defendant Cal Bay Corporation, as you have heard from the testimony, had been engaged in drilling a hole on parcel 59. In determining the market value of the mineral rights, if any, in this parcel, you may consider the amount, if any, which the existence of this hole enhanced the market value of these rights. However, it is not within your province to evaluate the hole or to give any consideration to the cost of drilling the same or the reproduction cost thereof. You must determine, as I have already instructed you, what amount in terms of cash a willing buyer would have paid to a willing seller for the mineral rights in this parcel of land with full knowledge of all the facts, including all the facts having to do with the presence of and the drilling of this hole on the property. You are not at liberty to assess the value of the mineral rights if you find that they have a value and [1021] of the hole, and by a process of addition fix the total value of the mineral rights.

There has been some statement made to you as to severance damage. Severance damage may be very simply stated to be this: If you have a piece of property consisting of 10 acres and the Government takes five acres of it, if some damage results to the five acres that were not taken because the Government took five acres of your 10-acre piece, that damage to the part which the Government did not take from you is called severance damage, and that sometimes happens in cases. A property owner may have a piece of property that has a road into it or it has access to a river or a creek or it is located in certain proximity to a watershed; if the Government should come along and take of a 100-acre piece a part and thus leave the owner the remaining parcel without access to a road, a water supply and the like, the part that the Government has not taken would be damaged, and that is what we speak of generally as severance damage.

Certain of the defendants in this case have claimed severance damage to portions of the property not taken by the Government. Severance damages, according to the law, are never presumed to exist but they must be proved by a preponderance of the evidence, the same as any other claim. The severance damage must be based upon some real physical disturbance of a property right which naturally tends to and actually does [1022] decrease the market value of the property that is not taken. You are not to consider in this connection possible damage that would be uncertain, remote, speculative or imaginary, but only such elements as would tend

to reduce the market value of the portion that was not taken by the Government.

It has been stated to you by counsel during argument that unless compensated by a verdict of the jury the defendants will not be reimbursed for their efforts expended in connection with their gas exploration project. Such reimbursement, however, has no part in the scheme of just evaluation of the defendants' alleged mineral rights. Many explorations for gas and oil are made all over the world and in innumerable instances are unsuccessful. The Government, because of its exercise of its right of eminent domain to take this property, cannot be charged with the drilling or other expense of the defendants. It is only required to pay the market value as I have defined that term to you of the interest that was taken.

Another statement was made that I think I should comment upon because these matters might tend to becloud the actual limits of the authority of this jury in determining the amount, if any, of the value of the interest taken here.

Some comment was made to the effect that the fundamental issue was that the defendants should have been given the opportunity to proceed with their tests further, and that the [1023] taking therefore resulted in damage to them for that reason. I repeat to you again what I said, that the United States has a paramount right to take the property at any time in the public interest. It may take the property while a building is being erected. It need not give the owner any opportunity to complete the building. Its only obligation is to pay the market

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value of that which is taken. Likewise the amount that an owner invests in his property is not germane in determining the matter of market value. I may pay \$50,000 for a piece of property, perhaps yielding to the importunities of some glib salesman, and yet the market value of that property may be only \$10,000. If the Government takes that property, the Government is only required to pay the market value of \$10,000, no matter what I may have paid for it or invested in it, because by law just compensation always is only concerned with market value.

Now, ladies and gentlemen, counsel have referred to the different valuations that have been made in this case and each side has put a chart on the board. The court has taken the time to summarize the claims in a simple manner, and I have prepared a paper for the aid of the jury, so that they can see in simple form just what is claimed by each side in this case, and in convenient form, and I think I have checked and rechecked it, and I believe the figures are accurate in every respect. In the left-hand column of this document I have set forth the claims [1024] as made by the defendants, and I think the figures correspond precisely with the figures that have been stated by counsel in their arguments and in their proposed instructions to the court; and I have set them up by lessee's interests and lessor's interests, and by parcel numbers. Opposite them on the right-hand side of the page, I have set up the values as fixed by the Government. I have taken the highest values that were given by the Government opinion witnesses here

so that you may see exactly what their respective claims are. This paper will be given to you by the court to take with you into the jury room, not as evidence at all, but merely to aid the jury in having before them in concrete simple form what each side claims, so that you will not have to have recourse to the reading of a lot of testimony, and perhaps a laborious examination of many exhibits.

The total claims of values of the defendants are set forth at \$786,225, and the highest value as fixed by the Government with respect to those same claims is \$3,865.

In the case of severance damage the Government witnesses testified that there was no severance damage at all. The witnesses for the defendants testified as to severance damage, which is specifically set forth in this schedule, which you may take with you to the jury room.

We have also prepared for you some forms of verdict for your use, inasmuch as there is a number of properties involved [1025] in this action. There are five separate forms of verdict that have been prepared. I shall read each one to you so that you may determine, in connection with the court's instructions, what you have to do when you go in the jury room.

The first verdict refers to the Cal Bay Corporation, and it reads as follows:

"We the jury find the market value as of January 15, 1945 of the leasehold estate of the defendant Cal Bay Corporation in Parcels 57, 58 and 59 to be the sum of blank dollars."

Where it says "blank dollars" you will put in there such sum as you may find to be the proper market value. If you find that there is no market value, you will write "Nothing" there. Otherwise, you will put in there whatever sum you conclude is the proper market value.

This same form of verdict further reads:

"We further find severance damage to the leasehold estate of the defendant Cal Bay Corporation not taken by the United States of America to be the sum of blank dollars,"

and there you will insert such sum, if any, that you think should be awarded for severance damage to the Cal Bay Corporation.

The next form of verdict has to do with the defendant Maria Faria, and it reads as follows:

"We the jury find the fair market value on July 24, 1944 of the royalty interest of the defendant Maria [1026] Faria under the leases on Parcel 59 to be the sum of blank dollars. We further find severance damage to the royalty interest of the defendant Maria Faria not taken by the United States of America to be the sum of blank dollars."

You will fill in, as you see fit or not, the blanks in that verdict, as I have heretofore stated.

The next form of verdict reads:

“We the jury find the market value as of July 24, 1944 of the royalty interest of the defendant Edward Faria under the leases on Parcel 58 to be the sum of blank dollars.”

The next verdict reads:

“We the jury find the market value as of July 24, 1944 of the royalty interest of the defendant Mae E. Roche under the leases on Parcel 57 to be the sum of blank dollars.”

The last verdict or form of verdict reads:

“We the jury find the market value as of July 24, 1944 of the leasehold estate of defendant Joseph Faria, Jr. in Parcels 59 and 64 to be the sum of blank dollars. We further find the severance damage to the leasehold interest of the defendant Joseph Faria not taken by the United States to be the sum of blank dollars.”

And you may fill out those blanks in the manner I have indicated. [1027]

Ladies and gentlemen, if you can conscientiously do so you are expected to agree upon a verdict in this case. The matter which has been submitted to you for your consideration is an important one and a serious one, as you can see. You should bring to your consideration of this case your earnest desire to do what is just and proper, with due regard to both the United States and the defendants here. If any one of you should be convinced that

your view of the case is erroneous, do not be stubborn and do not hesitate to abandon your own view under such circumstances. On the other hand it is entirely proper to adhere to your own view if after a full exchange of ideas you still believe you are right. That is for the reason that both parties are entitled to the independent judgment of each juror.

You should not, in arriving at your verdict, resort to the so-called pooling plan or scheme. That is a scheme whereby each juror would write down the amount he or she thinks should be awarded and then add up those amounts and divide it by 12 and thus arrive at the amount of your verdict. Your verdict should be based upon evidence and not upon chance.

In that connection I call your attention to the fact that there is a staggering divergence of opinion between the values testified to by those who have testified on behalf of the defendants and those who have testified on behalf of the Government. The total figures of the defendants' claim is \$786,000. [1028] The total figures of values asserted by the Government is \$3,865. It would be equally improper for you to fix a point midway between these two figures and feel that you had done justice by so doing. You may only arrive at the amount, if any, that you find upon the basis of the evidence in the case and by no plan of chance or like scheme.

Ladies and gentlemen, when all of you agree to a verdict it is the verdict of the jury. You are cautioned that you should not return to the court-

room with a verdict unless it is the unanimous verdict of all of you. When you retire to the jury room to deliberate you will select one of your number as foreman or forewoman, as the case may be, and he or she will represent you as your spokesman in the further conduct of this case in this court. After you have retired to deliberate and have organized and selected a foreman, if there are any exhibits or schedules or other documents that are lawfully before the court which you desire to have sent to you, you may so advise the court and they will be sent to you.

Do either counsel wish to note any exceptions?

Mr. Scampini: Your Honor, I wonder if it would be proper to submit some copies of the exhibit showing the various parcels that I have?

The Court: Any exhibit that the jury wishes to have, or if they want all of them, after they have retired to deliberate, if they will so advise the court we will send in to them anything [1029] they want. Does the Government wish to note any exceptions to the charge?

Mr. Bourquin: No exceptions to the charge, your Honor.

The Court: Counsel for the defendant?

Mr. Scampini: We have certain objections.

The Court: Would you prefer me to excuse the jury so that you may make your exceptions in the absence of the jury?

Mr. Scampini: Yes, your Honor.

The Court: Ladies and gentlemen, I will ask you to retire for a brief moment at this time. The

instructions of the court are not yet complete. The case is not yet submitted to you for decision. You are still under the admonition that you are not to discuss the case among yourselves or with any other person, nor to form or express any conclusion until it is finally submitted to you.

We take the jury to the jury room at this time, and the bailiff will bring you back in a short time for further instructions if there be such.

(Thereupon the jury retired from the courtroom.) [1030]

(The following proceedings were out of the presence of the jury:)

Mr. Chamberlin: If the Court please, at this time we have certain objections to the instructions given, and also to the failure of the court to give other instructions. Of course, as the charge is read to the jury or stated to the jury it is pretty hard to put your finger on the particular instructions that your Honor is giving at the time. In this case they did not follow, I do not believe, any of the forms of instructions given by either party, but substantially most of the instructions that both sides proposed. Of course, our main objection, your Honor, is to the instruction which started out with language, "Ordinarily the court abstains from expressing an opinion," and thereafter your Honor expressed an opinion upon the credibility of certain expert witnesses and also upon the evidence in the case. Our objection to that particular instruction—and it was quite a long one—is that it exceeds the

bounds of proper comment by a court in the instructions and amounts to taking sides. We object to the instruction as prejudicial error, on the ground that it denies the defendants in this action due process of law under the Fifth Amendment to the Constitution, on the ground that it is repugnant to the Fifth Amendment to the Constitution, providing that a defendant is entitled to just compensation in condemnation cases. We object to it on the ground that it is [1031] repugnant to the Sixth Amendment to the Constitution in that it denies the defendants in this action a fair trial by jury.

Your Honor in opening the charge said that ordinarily the court had no power to determine facts. We object to that language of the court upon the ground assigned and would intimate that the court did have such power in this case.

The Court: I said ordinarily the judge does not comment on that.

Mr. Chamberlin: You added that afterwards, your Honor.

The Court: Mr. Reporter, will you read that part of the instructions?

(The Reporter [reading]: "Ordinarily the judge does not comment upon the evidence in the case. I intend a little later to make some comment concerning one phase of the evidence in this case, and when I do so I will give the jury appropriate instructions with respect to that matter.")

Mr. Chamberlin: It was before that.

(The Reporter [reading]: "Ordinarily the court is not permitted to invade the province of the jury in determining the facts of the case.")

Mr. Chamberlin: Your Honor used the word "ordinarily," which would intimate to the jury there is an exception in this case. A little later on, along the same line, your Honor said to the jury that they were the sole and exclusive judges of the facts, and then your Honor said that you would comment [1032] later on certain features.

The Court: You may make your exception. I think I fully covered that.

Mr. Chamberlin: There were two preliminaries, as I say, in the instructions to which we object on the same grounds that I objected to the main instruction. We also object to the instructions which were much farther along in the case, and which your Honor prefaced, I believe, with "Certain arguments were made before the jury." Your Honor then proceeded to answer those arguments. We object to those instructions in those regards on the ground they exceed the bounds of proper comment on the evidence, that they take sides with the plaintiff in this case, and for that reason is prejudicial error.

We also object to the refusal of the court to give certain instructions. Your Honor placed the burden of proof upon the defendants, and properly so, but your Honor refused to give our instruction No. 22. Instruction No. 22 is to the effect that while it is incumbent upon one who assumes the affirm-

ative of the issue, thus having the burden of proof, to prove his allegations by a preponderance of evidence, this rule does not require demonstration. As we have the burden of proof in this unusual case we think your Honor was prejudicial to the rights of the defendants in your Honor not giving that instruction. [1033]

Then your Honor gave the instructions on expert witnesses, commencing upon the expert witnesses for the defendants, on the theory that their estimates were extravagant. We think we were entitled to our instruction No. 44 to this effect: If you find and believe from the entire evidence that any of the witnesses as to value——

The Court: I have No. 44. I do not think it will be necessary for you to read it. I will identify it by number.

Mr. Chamberlin: I object to the refusal of the court to give that part of Instruction No. 44 which reads,

“Or, on the other hand, have minimized or diminished the value.”

In other words, the instruction as given magnifies the over-statement and we have no comment upon under-statement.

We also object to the refusal of the court to give our instruction No. 45. Your Honor covered that largely, but you omitted a cautionary provision, that is, the second paragraph of our Instruction No. 45, whereby the jury should have been told that they were entitled to consider your Honor's remarks no

greater in weighing the testimony of the witnesses than the arguments of counsel. Your Honor neglected to give that.

We also object to the refusal of the court to give out instructions Nos. 40, 41, and 43, those instructions having to do with the market value of the oil and gas leases. We object upon the ground that the refusal to give those instructions [1034] is prejudicial error.

Is there anything else you can think of?

Mr. Scampini: I do not think so.

Mr. Chamberlin: There is one feature here, your Honor, and that is throughout the instructions to the jury you have drawn the distinction between a leasehold interest and the royalty interest. The stipulation which was entered into with the Government—I am objecting in this regard to the forms of verdict which your Honor proposes to submit to the jury—the stipulations which were entered into between the defendant and the Government **reserved** mineral rights. The value to be **determined at this** trial is the mineral right of certain defendants.

The Court: There cannot be any confusion as to what is referred to.

Mr. Chamberlin: Yes, your Honor, for the reason that under those leases they had a reversionary interest. They had a way of getting back the entire mineral rights in addition to the royalties in case the lessor ceased——

The Court: I do not think there can be any confusion on that. That is merely a convenient way to refer to the interest. It has been so referred to——

Mr. Chamberlin: We feel if it were only a matter of royalty, some question might come up as to whether we would be entitled to severance damage. If it is a mineral right [1035] we do not feel that way.

Mr. Bourquin: May I object to this in the interest of keeping the record straight? I thought we had agreed on the forms of these verdicts.

Mr. Chamberlin: I submitted some to the clerk——

The Court: The court was probably responsible for that because I was afraid that the jury might be confused when we were talking about these landlords and still referring to them as mineral interests, and they would not know that was the same kind of interest as the other defendants. I did that for the purpose of distinguishing them, that is all. I do not see any possible prejudice.

Mr. Bourquin: It followed the pattern of the testimony introduced by the defendants.

The Court: Very well, all the exceptions of counsel will be noted. You may bring the jury in.

Mr. Scampini: Counsel has referred to the Sixth Amendment of the Constitution as guaranteeing the right of trial by jury, and I think he probably forgot the sequence. I believe it is the Seventh Amendment. I desire the record to so show.

The Court: I think my figures are correct in those statements.

Mr. Scampini: They are correct.

(The jury returned to the courtroom.) [1036]

The Court: Let the record show that the jurors are all present. Ladies and gentlemen, you have had to walk back to the jury room and back here again, but it was necessary, and I brought you back for the purpose of now telling you that the instructions of the court are completed and the case is now submitted to you for decision. You may therefore now retire and proceed with your deliberations.

(Thereupon at 3:00 p.m. the jury retired from the courtroom to deliberate upon a verdict.) [1036-a]

Friday, February 7, 1947

(The jury returned into court at 9:20 p.m.)

The Court: Let the record show the jurors are all present. The court is in receipt of the following communication from the jury:

“On behalf of one juror a request is made that the instructions of the Judge to the jury be reviewed.

“WILLIAM H. OWEN,
“Foreman.”

Mr. Foreman, do I understand that the jury requests the court to re-read the instructions to the jury?

The Foreman: I think that is correct, your Honor. One of the jurors is undecided and feels if the instructions——

The Court: If it is the request of the jury the Court [1037] can either re-read the instructions to

the jury or if counsel have no objection, the reporter has already typed up the instructions, and as we do in some cases, I can give you the instructions and you can return with them to the jury room and read them for yourselves. Is that agreeable to counsel?

Mr. Scampini: We have no objection.

Mr. Bourquin: Yes, your Honor; that is all right.

The Court: I have not had a chance to check them over, counsel, but they are as the reporter has presented them to me. I will have to remove from them the portion of the proceedings that occurred while the jury was absent.

Mr. Scampini: Yes, your Honor.

The Court: It is stipulated by both counsel that the court may give the transcript of the instructions as furnished by the reporter to the jury?

Mr. Scampini: Yes, your Honor.

Mr. Bourquin: Yes.

The Court: I will say to the jury what the clerk is removing from the transcript which I gave to him are the proceedings which took place in the absence of the jury, and are not part of the instructions of the court.

Mr. Scampini: It starts at page 1030 of the transcript, your Honor.

The Court: I think it starts at page 1031. doesn't it?

Mr. Scampini: The portion being taken out.

The Court: Yes. You can hand it to the jury. You may retire, ladies and gentlemen.

(The jury retired at 9:25 p.m. and returned into court at 10:50 p.m.)

The Court: Let the record show that the jurors are all present. The court is in receipt of the following communication from the jury:

“This is to inform your Honor that eleven of the jurors have arrived at a verdict but one juror continues to base his opinion on factors that, to the other eleven jurors, seem to be contrary to your Honor’s instructions to the jury. We ask the advice of the Court.

“WILLIAM H. OWEN,
“Foreman.”

The Court cannot advise the jury at all. In view of what the jury has stated, and inasmuch as the jury has advised the court of a division of the jury on some undisclosed matter, there is no direction that the court can give the jury, and under the circumstances I don’t find that it would be proper, having this information from the jury, to do anything except perhaps to discharge the jury, for were I to give any advice to the jury or assume to give any advice to the jury the criticism might be properly made that the court was attempting to coerce or otherwise compel the bringing in of a verdict by some advice that the court might give concerning a matter which is not disclosed to the court in this communication. [1039] The statement that the jury has furnished to the court is a most unusual

one. I take it that all of the jurors were informed and knew the contents of this communication?

The Foreman: Yes, your Honor; it was read.

The Court: This communication was written and known to all the jurors?

The Foreman: Written at the request of the jurors, themselves, your Honor.

The Court: It raises quite a serious question. It raises a question that might involve a violation of law. That is why I was so particular to ask whether or not all of the jurors were aware of this communication being sent to the court.

The Foreman: Yes, your Honor; each and every juror is fully aware of it.

The Court: If the statement of the jury is correct there is nothing that the court can do with respect to a verdict in the case, but I will say that in view of the nature of the communication it will become the duty of the court to cause an investigation to be made, because it is the duty of all citizens who are summoned for jury duty to obey the instructions of the court. It cannot be disregarded, and a violation of such duty entails serious consequences which the court will, of necessity, be called upon to investigate. I say that because it would be impossible for me now, having received [1040] this communication from the jury, to accept a verdict from the jury.

Mr. Bourquin: I am reminded by my associate that this jury has been out from three o'clock to six o'clock, and again from after dinner until this hour. Does your Honor feel that in the nature of

this case that this jury over this time has given the ultimate time to ascertain that they are unable to agree upon a verdict? I offer that suggestion because this case has taken, I know the other side will agree, a great deal of time to try. I am talking about the fact that if this jury can agree we would rather that they should agree, whatever their verdict. If they cannot agree we are going to have to spend the same time in presenting it again. That works on either side.

The Court: I suppose counsel on the other side would feel the same way about that.

Mr. Scampini: Certainly; no question about it.

The Court: Well, if both counsel are in agreement I will say this to the jury, and if there is any objection to what I say you note it, it is the duty of the jury to obey the instructions of the court as to the law of the case, and if the disagreement between the jury arises because of a failure to obey the instructions of the court, then that is a misfeasance on the part of the juror who fails to follow the instructions of the court. Just that simple statement. If under those [1041] conditions both sides are satisfied for me to ask the jury to retire and see whether they can still reach a verdict, I will do so, but I would not do so unless both sides are agreeable to that.

Mr. Bourquin: We are satisfied, your Honor. This is only one of seven or eight hundred cases that we have had to try in this connection.

Mr. Scampini: And I am satisfied, your Honor, subject only to the general objections that we raised

earlier in the afternoon, of course, as to the instructions.

The Court: Well, I will instruct the jury to go out once more and try to agree upon a verdict, and you may then advise me of what conclusion you come to.

(The jury retired at eleven o'clock p.m., and the following proceedings took place in the absence of the jury:)

The Court: I may say, Mr. Scampini, and Mr. Bourquin, that a very unusual situation has presented itself in this matter, and I don't want to be in a position of attempting to coerce a verdict at all in this case, and I would not have asked the jury to go out again unless both sides were agreeable to doing that. Apparently, the disagreement between the jury does not arise as to some factual matter, but the statement is made apparently by one or all the jurors that one juror has expressed an opinion on matters that are contrary to the judge's instructions to the jury. I draw from that the conclusion either that some juror is considering evidence [1041-a] that the court has told them not to consider, or is not considering the evidence that the court has told them could be considered, or is coming to some arbitrary conclusion that is contrary to the instructions, and, of course, as I have said to the jury, that is a serious matter. That is a matter that would involve definite misconduct of a juror. For that reason I would not send the jury out again unless counsel were satisfied. You will have to take

a chance on what happens by the verdict of the jury under those conditions.

Mr. Scampini: I assume by my consenting to the jury being sent out again it will be deemed we have not waived any of the exceptions heretofore stated.

The Court: No, of course not. This is without prejudice to any exceptions counsel have taken to the court's charge.

Mr. Scampini: I would not be bound by the verdict of the jury merely because we agreed.

The Court: No. I am only referring to what the court just did in asking the jury to go out again.

Mr. Bourquin: We are willing to agree on the record, your Honor, that counsel's objections to the charge of the court may be preserved, notwithstanding this incident, but it will be as it appears from your Honor's reading of the note, that this is not a disagreement on the facts, but the law, then in view of the fact that we have the same approach on these cases that we have carried over for many years, we [1042] would like this jury to deliberate further; we believe it is warranted in view of the nature of the case.

The Court: The hour is getting late. Suppose that within some reasonable length of time it might be indicated that the jury could still reach a verdict if it had more time, how do counsel feel with respect to the matter of giving the jury the proper instruction to go to their homes tonight and resume deliberations tomorrow morning?

Mr. Scampini: In view of the incident I would rather suggest if the jury fails to agree that your

Honor may, within the next half hour—I think it would be better to discharge the jury. That is my view of the case.

Mr. Bourquin: I feel this way about it: If it were a disagreement of the jury on a factual matter, I would not express what I am about to say, but realizing this is a civil case and it may be an unusual thing in our experience that a civil jury should be asked to deliberate over the next day, but we have a precedent in this court. About twelve years ago I participated in a trial before his Honor, Judge St. Sure, where we tried a technical question like we tried in this case, where we tried a case that took us three weeks to present. It was a case, a damage case against Henry Ford and the Ford Motor Company, because of an alleged defect in the character of Steel that he had put forth in one of the first Model A's that came out. It had collapsed and what-not. It became a matter [1043] of very scientific testimony, highly technical, and after three weeks of that trial the jury was sent to deliberate in the early afternoon. They were sent to dinner and returned and resumed their deliberations, and they came in about ten o'clock with the word that they were unable to agree. Judge St. Sure sent them out and keep them out later, did not have any hesitancy on his part. I don't recommend that to your Honor as anything except as precedent.

Mr. Scampini: I have no objection either way.

The Court: I think I will reserve decision on what I should do in the matter until I hear further from the jury. We will take a recess.

(The jury returned into court at 11:15 p.m.)

The Court: Let the record show that the jurors are all present. Mr. Owen, has the jury agreed upon a verdict?

The Foreman: Yes, your Honor; we have a unanimous verdict.

The Court: Will you hand the verdicts to the deputy marshal, please?

The Court: The Clerk will read the verdicts.

The Clerk: Ladies and gentlemen, harken to your verdicts as they shall stand recorded:

“We, the jury, find the market value as of July 24, 1944, of the royalty interest of defendant Mae E. Roche, under the leases on parcel 57, to be the sum of \$60. William H. Owen, Foreman.”

So say you all to that? [1044]

The Jurors: We do.

The Clerk: “We, the jury, find the market value as of July 24, 1944, of the royalty interest of defendant Maria Faria under the leases on Parcel 59, to be the sum of \$2312.00.

“We further find the severance damage to the royalty interest of the defendant Maria Faria not taken by the United States of America to be the sum of \$ none. William H. Owen, Foreman.”

So say you all?

The Jurors: We do.

The Clerk: “We, the jury, find the market value

as of January 15, 1945, of the leasehold estate of the defendant Cal-Bay Corporation in parcels 57, 58 and 59, to be the sum of \$926.00.

“We further find the severance damage to the leasehold estate of the defendant Cal-Bay Corporation not taken by the United States of America to be the sum of \$ none. William H. Owen, Foreman.”

So say you all?

The Jurors: We do.

The Clerk: “We, the jury, find the market value as of July 24, 1944, of the leasehold estate of the defendant Joseph Faria, Jr., in Parcels 59 and 64, to be the sum of \$517.00.

“We further find the severance damage to the leasehold interest of the defendant Joseph Faria, Jr., not taken by [1045] the United States of America to be the sum of \$ none. William H. Owen, Foreman.”

So say you all?

The Jurors: We do.

The Clerk: “We, the jury, find the market value as of July 24, 1944, of the royalty interest of defendant Edward Faria under the leases on Parcel 58, to be the sum of \$50.00. William H. Owen, Foreman.”

So say you all?

The Jurors: We do.

The Court: Your verdict as read by the Clerk is unanimous; you have all agreed on the verdict, have you?

The Jurors: Yes.

The Court: Do counsel wish the jury to be polled, either side?

Mr. Scampini: I desire the jury be polled.

(The Clerk then polled the jury and all answered in the affirmative, and the jury was then discharged by the court.)

[Endorsed]: Filed April 4, 1947. [1046]

DEFENDANTS' EXHIBIT No. 1

(Endorsed): Filed Jan. 23, 1947.



DEFENDANT'S EXHIBIT No. 2

[Penciled Notation: 367.36 Ac. assigned to Cal Bay Corp. 73.51 retained by Joe Faria, Jr.]

OIL AND GAS LEASE

(86)

This Indenture of Lease, made and entered into this 11th day of Aug., 1941, by and between X Mary Faria of Concord, party of the first part, hereinafter called Lessor (whether one or more), and Joseph Faria, Jr., and Bud Hildebrand, party of the second part, hereinafter called Lessee.

Witnesseth: That the Lessor, for and in consideration of Ten Dollars, in hand paid, the receipt of which is hereby acknowledged, and of the covenants and agreements hereinafter contained on the part of the Lessee to be paid, kept and performed, has granted, demised, leased and let and by these presents does grant, demise, lease and let unto the said Lessee exclusively, for the purpose of exploring, mining and operating for oil, gas and casing-head gas, and other hydrocarbon substances, and taking, storing, removing and disposing of same, and manufacturing gasoline and other products therefrom, with the right for such purposes to the free use of oil, gas or water from said land, but not from Lessor's water wells or ponds, and granting the right to build tanks, power houses, stations, houses for employees and such other structures (excepting refinery) as may be necessary or con-

Defendants' Exhibit No. 2—(Continued)

venient in its operations, together with rights-of-way, easements and servitude for pipe lines, power lines, telephone and telegraph lines, with the right of removing, either during or after the term hereof, any and all improvements placed or erected on the premises by Lessee, including the right to pull all casing, on all that certain tract of land situated in the County of Contra Costa, State of California, described as follows, to-wit:

Lot 2 Sec. 21 T2N R1W 38.72 Ac.; por. Lot 1 & SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 21 T2N R1W 76.64 Ac.; S $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec. 21 T2N R1W & W 12 Ac. of S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 22 T2N R1W 92 Ac.

Lot 3 & Fract'l SE $\frac{1}{4}$ of Sec. 21 T2N R1W 155.51 Ac.; N $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec. 21 T2N R1W 80 Ac.

and containing 440.87 acres more or less.

To Have and to Hold the same for term of twenty (20) years from and after the date hereof, and so long thereafter as oil or gas, or casinghead gas, or other hydrocarbon substances, or either or any of them, is produced therefrom in quantities deemed paying by Lessee.

In consideration of the premises it is hereby mutually agreed as follows:

1. Lessee shall pay Lessor as royalty the equal One-Eighth part of the value of all oil removed from the leased premises, after making the cus-

Defendants' Exhibit No. 2—(Continued)

tomary deduction for temperature, water, and b.s., at the posted market price in the district in which the premises are located for oil of like gravity the day the oil is run into pipe line or storage tanks, and in this event settlement shall be made by Lessee on or before the 20th day of each month for accrued royalty for the preceding calendar month; or at Lessor's option exercised not oftener than once in any one calendar year upon sixty (60) days' previous written notice, deliver into Lessor's tanks on the leased premises or at mouth of well to pipe line designated by Lessor, free of cost, Lessor's One-eighth part of said oil.

2. Lessee shall pay Lessor as royalty One-eighth of the net proceeds derived from the sale of gas from each well while same is being sold or used off the premises, and in this event settlement shall be made by Lessee on or before the 20th day of each calendar month for gas sold during the preceding month, but nothing in this agreement contained shall require Lessee to save or market gas from said lands, unless there shall be a surplus above fuel requirements and a market at the well for same. The Lessor to have gas free of cost from any gas well on the leased premises, for all stoves and inside lights in the principal dwelling houses on said land by making his own connections at a point designated by Lessee, the taking and use of said gas to be at the Lessor's sole risk and expense at all times.

Defendants' Exhibit No. 2—(Continued)

3. The Lessee shall pay to Lessor for gasoline or other products manufactured and sold by the Lessee from gas produced from any well as royalty One-eighth of the net proceeds from the sale thereof, after deducting cost of manufacturing and marketing same. If said gas is sold by the Lessee, the Lessor shall receive as royalty One-eighth of the net proceeds of the sale thereof.

4. This lease shall terminate as to all rights and obligations contained hereunder unless the Lessee shall on or before One year from date hereof commence operations for the drilling of a well for oil or gas on the above described land, and prosecute the drilling thereof with due diligence and dispatch until a depth of 5,000 feet has been reached, unless oil or gas is found in paying quantities at a lesser depth, or unless formations are encountered at a lesser depth which would indicate to the Lessee's geologist that further drilling would be unsuccessful, or unless mechanical difficulties are encountered in the prosecution of the drilling of said well; in the event such formations or mechanical difficulties are encountered, then the Lessee may abandon said well, but this lease shall continue in full force and effect provided a new well is commenced within ninety (90) days from the abandonment of the first well and thereafter drilled diligently as hereinabove provided. If at any time prior to the discovery of oil or gas on this land and during the term of this lease, Lessee shall drill a dry hole on this land, to

Defendants' Exhibit No. 2—(Continued)

the depth specified above, this lease shall terminate unless operations for the drilling of a new well shall be commenced within 6 months from the date of the completion of said dry hole, and thereafter be drilled diligently by Lessee.

5. If operations for the drilling of a well for oil or gas be not commenced on said land on or before one year from this date, this lease shall terminate as to both parties, unless the Lessee shall, on or before one year from this date, pay or tender to the Lessor or for the Lessor's credit in the Bank at or its successors, which bank and its successors are the Lessor's agent, and shall continue as depository of any or all sums payable under this lease, regardless of changes of ownership in said land or in the oil or gas, or in the rentals to accrue thereunder. the sum of Eight and one-half cents per acre per month, which shall operate as rental and cover the privilege of deferring the commencement of drilling operations for a period of Six months. In like manner and upon like payments or tenders, the commencement of drilling operations may be further deferred for like periods successively during the term fixed in the preceding paragraph for the commencement of drilling operations. All payments or tenders may be made by check or draft of Lessee or any assignee thereof, mailed or delivered on or before the rental paying date. It is the intent hereof that rentals shall not be paid except for the

Defendants' Exhibit No. 2—(Continued)
purpose of deferring the commencement of drilling operations as herein provided.

6. After discovery of oil in paying quantities in any of the wells herein provided for on the above described premises, the Lessee agrees to commence operations for the drilling of another well within ninety (90) days thereafter, and thereafter continuously operate at least one (1) string of tools, allowing ninety (90) days between the completion of one well and the commencement of the next succeeding well until one well has been drilled to each 20 acres, said number to be an average regardless of where drilled. Nothing herein shall be considered to limit the number of wells which the Lessee may drill should it so elect in excess of the number hereinabove specified.

7. If, after the expiration of the twenty (20) year term of this lease, production on the leased premises shall cease from any cause, this lease shall not terminate provided Lessee resumes operations for the drilling of a well or the restoration of production within sixty (60) days from such cessation, and this lease shall remain in force during the prosecution of such operation, and, if production results therefrom, then as long as production continues.

8. In the event of discovery of oil in any well on adjacent properties within three hundred (300) feet of the boundary line of the above described premises, and the same produces oil in paying

Defendants' Exhibit No. 2—(Continued)

quantities for thirty (30) consecutive days, then in that event the next well to be drilled in accordance with Section 6 hereof shall be so placed as to offset said well on adjacent property, or if no well is being drilled by Lessee on demised premises, and the total well requirements as specified in Section 6 have not been fulfilled, then Lessee shall, within ninety (90) days thereafter commence operations for the drilling of a well to offset such producing well and drill the same diligently to the strata from which oil is being produced on the adjacent property.

9. There shall be no obligation upon the part of the Lessee to drill, pump or operate said premises, except offset wells, when wells offset are being operated, so long as the price of oil of the quality produced on said property shall be less than seventy-five cents per barrel at the well.

10. Notwithstanding anything in this lease contained to the contrary, it is expressly understood and agreed that the obligations imposed upon the Lessee may be suspended so long as Lessee's compliance is prevented by the elements, accidents, strikes, lockouts, riots, delays in transportation, inability to secure materials in the open market or interference by State or Federal action, or other causes beyond the reasonable control of the Lessee.

11. The Lessee shall carry on all operations in a careful, workmanlike manner and in accordance with the laws of the State of California. The

Defendants' Exhibit No. 2—(Continued)

Lessee shall keep full records of the operations and of the production and sales of products from said property, and such records and the operations on the property shall be at all reasonable times open to the inspection of the Lessor. Whenever requested by the Lessor, the Lessee shall furnish to the Lessor a copy of the logs of all wells drilled on said property.

12. The Lessor shall have the right to the use of the surface of said land for agricultural and grazing purposes to such an extent as will not interfere with the proper operation of the lease for oil or gas. The Lessee agrees to conduct its operations so as to interfere as little as is consistent with the economical operation of the property for oil or gas, with use of the land for agricultural or grazing purposes. Whenever required by Lessor in writing, the Lessee shall fence all sump holes or other openings to safeguard livestock on said land.

13. The Lessee shall pay the surface owner or surface tenant for all damages to livestock, crops, trees, fences, existing pipe lines, canals, buildings and other improvements caused by its operations under this lease. In event the parties hereto are unable to agree on the amount of such damage, then the same shall be left to arbitration.

14. The Lessee agrees that no well shall be drilled nearer than one hundred fifty (150) feet of any dwelling house, now on said premises, without the written consent of the Lessor, unless such drill-

Defendants' Exhibit No. 2—(Continued)

ing be necessary for the protection of the interests of either of the parties hereto. When requested by Lessor, the Lessee shall bury its pipe lines below plow depth.

15. The Lessee may at any time quitclaim this lease in its entirety or as to part of the acreage covered hereby and thereupon Lessee shall be released from all further obligations as to the part of the land so quitclaimed, and all rentals and drilling obligations shall be reduced pro rata according to the acreage quitclaimed. All lands quitclaimed shall remain subject to easements for rights-of-way necessary or convenient for Lessee's operations on land retained by it. Except as herein provided, full right to said land shall revest in Lessor, free and clear of all claims of Lessee, except that Lessor, his successors or assigns, shall not drill any well on the said land within three hundred (300) feet of any producing well retained by Lessee.

16. The Lessee shall pay all taxes on its improvements and all taxes on its oil stored on the leased premises on the first day of March in each year, and Seven-eighths of the increase of taxes on the demised premises, or on such part of the demised premises as may be retained by the Lessee, under this lease, caused by the discovery of oil, gas or other substances herein mentioned thereon, and whether assessed upon said land, or as mineral rights or otherwise; it being the intention of the parties hereto that any taxes levied or assessed due

Defendants' Exhibit No. 2—(Continued)

to the discovery and existence of any of said substances shall be borne by the parties hereto in the proportion of Seven-eighths by the Lessee and One-eighth by the Lessor.

17. On the expiration of this lease, or if sooner terminated, the Lessee shall quietly and peacefully surrender possession of the premises to the Lessor and deliver to him a good and sufficient quitclaim deed and shall, so far as practicable, cover all sump holes and excavations made by it. In case of abandonment of any well by Lessee, if the Lessor desires to retain the same, he may notify the Lessee to that effect and thereupon the Lessee shall leave such casings in the well as the Lessor may require, and the Lessor shall pay to the Lessee fifty per cent (50%) of the original cost of such casing on the ground.

18. Upon the violation of any of the terms or conditions of this lease by the Lessee and the failure to remedy the same within sixty days after written notice from the Lessor so to do, then, at the option of the Lessor, this lease shall forthwith cease and terminate, and all rights of the Lessee in and to said land be at an end, save and excepting as to any and all wells producing or being drilled and in respect to which Lessee shall not be in default, and saving and excepting rights-of-way necessary for Lessee's operations, provided, however, that the Lessee may at any time after such default, and upon payment of the sum of Ten Dollars (\$10.00)

Defendants' Exhibit No. 2—(Continued)

to the Lessor as and for fixed and liquidated damages quitclaim to the Lessor all of the right, title and interest of Lessee in and to the leased lands in respect to which it has made default, and thereupon all rights and obligations of the parties hereto one to the other shall thereupon cease and terminate as to the premises quitclaimed.

19. All work done on the land by the Lessee shall be at the Lessee's sole cost and expense, and the Lessee agrees to protect said land and the Lessor of claims of contractors, laborers, or material men, and the Lessor may post and keep posted on said lands such notices as he may desire in order to protect said lands against liens.

20. Lessor hereby warrants and agrees to defend the title to the land herein described and agrees that the Lessee, at its option, may pay and discharge any taxes, mortgages, or other liens existing, levied or assessed on or against the above described lands, and, in the event it exercises such option, it shall be subrogated to the rights of any holder or holders thereof and may reimburse itself by applying to the discharge of any such mortgage, tax or other lien, any royalty or rentals accruing hereunder.

21. In case said Lessor owns a less interest in the above described lands than the entire and undivided fee simple estate therein, then the royalties and rentals herein provided for shall be paid the said Lessor only in the proportion which his interest bears to the whole undivided fee.

Defendants' Exhibit No. 2—(Continued)

22. If the estate of either party hereto is assigned (and the privilege of assigning in whole or in part is expressly allowed), the covenants hereof shall extend to their heirs, executors, administrators, successors and assigns, but no change of ownership in the land or in the rentals or royalties shall be binding on the Lessee until after Lessee has been furnished with written notice of such transfer or assignment, together with a certified copy of the instruments of transfer or assignment.

23. "Drilling Operations" as used in this lease is defined to mean placing of material upon premises for the construction of a Derrick and other necessary structures for the drilling of an oil or gas well followed diligently by the construction of such derrick and other structures and by the actual operation of drilling in the ground.

24. All payments which may fall due under this lease shall be made to Mrs. Antone Faria, one of the above named Lessors, in the manner herein stated.

25. This lease and all its terms, conditions and stipulations shall extend to and be binding on all the successors and assigns of said Lessor or Lessee.

Any provision or provisions in the Lease notwithstanding, it is agreed that this one of a series of Leases in a general district, said district including Sections 15, 16, 17, 21, 22, 23, 26, 20, 29, 27, 28 and 35 in Township 2 North, Range 1 East, Mount

Defendants' Exhibit No. 2—(Continued)

Diablo Base and Meridian, there being Leases with numerous property owners within said district, and it is agreed that if the Lessee hereunder commences drilling operations within one year from this date on any of the land described in any of the Leases held by the Lessee, with the owners of the property within the district hereinabove described, that such drilling operations shall constitute a full compliance with Paragraphs 4 and 5 of this Lease and the drilling operations on the lands so held shall be and constitute drilling operations on the land herein described for all intents and purposes.

In Witness Whereof, the parties hereto have caused this lease to be executed the day and year first above written.

Witness:

Her
MARY X FARIA,
Mark
Lessor.

/s/ JOSEPH FARIA, Jr.,
/s/ BUD HILDEBRAND,
Lessee.

Mary Faria, being unable to write, made her mark and I, in her presence and at her request, wrote her name near it and signed my own name as a witness.

/s/ E. P. JACKSON.
/s/ F. L. BOLLA.

Defendants' Exhibit No. 2—(Continued)

State of California,

County of Contra Costa—ss.

On this 11th day of Aug., in the year nineteen hundred and forty-one, before me, E. P. Jackson, a Notary Public in and for the County of Contra Costa, State of California, residing therein, duly commission and sworn, personally appeared Mary Faria, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

[Seal]

E. P. JACKSON,

Notary Public in and for the County of Contra Costa, State of California.

State of California,

County of Contra Costa—ss.

On this 11th day of Aug., in the year nineteen hundred and forty-one, before me, E. P. Jackson, a Notary Public in and for the County of Contra Costa, State of California, residing therein, duly commissioner and sworn, personally appeared Bud Hildebrand and Joseph Faria, Jr., known to me to be the persons whose names are subscribed to the within instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my

Defendants' Exhibit No. 2—(Continued)

hand and affixed my official seal the day and year first above written.

[Seal] E. P. JACKSON,

Notary Public in and for the County of Contra
Costa, State of California.

Recorded at request of Joseph Faria, Jr., April
10, 1947, at 50 min. past 12 p.m. in Book 637 of
Official Records, Page 488, of the Records of Contra
Costa County.

/s/ RALPH CUNNINGHAM,
Recorder.

Fee, \$3.90; pd.

ASSIGNMENT OF OIL AND GAS LEASE

Whereas, on the 11th day of August, 1941, a cer-
tain Oil and Gas lease was made and entered into
by and between Mary Maria as Lessor and Joseph
Faria, Jr., married, and Bud Hildebrand, single,
as Lessee, covering certain lands in Contra Costa
County, California, more particularly described in
said lease which was recorded on the day
of, 19.., in the office of the County
Recorder in and for the County of Contra Costa,
State of California, in Liber..... at Page.....
(Purchaser is hereby referred to the full records
of Contra Costa County, California); and

Whereas, the aforesaid lease and all rights there-
under or incident thereto pertaining to the acreage

Defendants' Exhibit No. 2—(Continued)
hereinafter described have been duly assigned to
and are held and owned by the undersigned:

Now, Therefore, for and in consideration of One Dollar, and other goods and valuable considerations, the receipt of which is hereby acknowledged, the undersigned lessee or assignee of the said lease and all rights thereunder or incident thereto, pertaining to the acreage hereinafter described does hereby bargain, sell, transfer, assign and convey unto Joseph Faria, Jr., all of the right, title and interest of the original lessee and of the undersigned, in and to the said lease and rights thereunder in so far as it covers that certain 440.87 acres described in and embraced under said lease dated the 11th day of August, 1941, and located in Contra Costa County, California, more particularly described as follows:

Lot Two, Section 21, Township 2 North, Range 1 West, containing 38.72 acres.

Portion Lot 1 and Southeast Quarter of Northwest Quarter of Section 21, Township 2 North, Range 1 West, containing 76.64 acres.

South Half of Northeast Quarter of Section 21, Township 2 North, Range 1 West and West 12 acres of South Half of Northwest Quarter of Section 22, Township 2 North, Range 1 West, containing 92 acres.

Lot Three and fractional Southeast Quarter of Section 21, Township 2 North, Range 1 West, containing 155.51 acres. North $\frac{1}{2}$ of NW $\frac{1}{4}$ of Section 21, T2N, R1W, contg. 80 acres.

Defendants' Exhibit No. 2—(Continued)

The undersigned assignor, for the same consideration, for himself and his beneficiaries, heirs, successors and assigns, does hereby covenant with said assignee herein named, his heirs, successors and assigns that he, the undersigned, is the lawful lessee or assignee of the said lease and of all the rights and interests thereunder pertaining to the lease acreage hereby assigned; that the undersigned has good right and authority to sell and assign said lease; that the said lease date August 11, 1941, is in full force and effect, subject to the records of Contra Costa County, California, and that all rentals and royalties due and payable upon said acreage hereby assigned have been paid; and

The assignment, being a part of the original lease as described in paragraph No. 1 of this assignment, is made by the undersigned and is accepted by said assignee herein named subject to all the terms, covenants and conditions of said lease, according to record.

In Witness Whereof, the undersigned has signed and sealed this instrument this twenty-first day of February, 1942.

Executed and Dated at Antioch, Contra Costa County, California.

/s/ BUD HILDEBRAND,

Unmarried.

/s/ JOSEPH FARIA, Jr.,

ESTHER L. FARIA.

His Wife.

Defendants' Exhibit No. 2—(Continued)

State of California,

County of Contra Costa—ss.

On this 10th day of April in the year one thousand nine hundred and forty-two, before me, Chas. A. French, a Notary Public in and for the County of Contra Costa, State of California, residing therein, duly commissioned and sworn, personally appeared Joseph Faria, Jr., and Esther L. Faria, his wife, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

In Witness Whereof I have hereunto set my hand and affix my official seal in the County of Contra Costa the day and year in this certificate first above written.

[Seal] /s/ CHAS. A. FRENCH,

Notary Public in and for the County of Contra Costa, State of California.

My commission expires April 26, 1942.

Recorded at request of Joseph Faria, Jr., April 10, 1942, at 50 min. past 12 o'clock p.m., in Liber 655 of, page 23, Official Records of Contra Costa County.

RALPH CUNNINGHAM,

Recorder.

.....

Deputy

Fee, \$1.40; pd.

Defendants' Exhibit No. 2—(Continued)

State of California,

County of Stanislaus—ss.

On this 21st day of February, A.D. 1942, before me, Helen Fetterman, Notary Public in and for the said County and State, residing therein, duly commissioned and sworn, personally appear Bud Hildebrand, known to me to be the person whose name is subscribed to the within Instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this Certificate first above written.

[Seal] /s/ HELEN FETTERMAN,
Notary Public in and for said
County and State.

ASSIGNMENT OF OIL AND GAS LEASE

No. 22309. Assignment of Oil and Gas Lease. From Joseph Faria, Jr., and Esther L. Faria to Cal-Bay Corporation.

Whereas, On the 11th day of August, 1941, a certain oil and gas lease was made and entered into by and between Mary Maria, Lessor, and Joseph Faria, Jr., and Bud Hildebrand, Lessee, covering the following described land in the County of Contra Costa and the State of California to wit:

Lot 2 Sec. 21 T2N R1W 38.72 Ac.

Por Lot 1 & SE $\frac{1}{4}$ of NW $\frac{1}{4}$ of Sec. 21 T2N R1W

Defendants' Exhibit No. 2—(Continued)

76.64 Ac. S $\frac{1}{2}$ of NE $\frac{1}{4}$ of Sec 21 T2N R1W & W
12 Ac of S $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec 22 T2N R1W 92 Ac.

Lot 3 & Fract'l SE $\frac{1}{4}$ of Sec 21 T2N R1W 155.51
Ac. N $\frac{1}{2}$ of NW $\frac{1}{4}$ of Sec 21 T2N R1W 80 Ac and
containing 440.87 acres more or less.

Except that part of the S $\frac{1}{2}$ of SE $\frac{1}{4}$ of Sec 21
which is a part of Lot 3, and amounting to 73.51
acres,

Said lease being recorded in the office of the
County Recorder of the County of Contra Costa in
books 637, page 488, and

Whereas, The said lease and all rights thereunder
or incident thereto are now owned by Joseph Faria,
Jr.

Now, Therefore, For and in consideration of One
Dollar (\$1.00) and other considerations, the re-
ceipt of which is hereby acknowledged, the under-
signed, present owners of the said lease and all
rights thereunder or incident thereto, do hereby
bargain, sell, transfer, assign and convey unto
Cal-Bay Corporation, a California corporation, all
the right, title and interest of the original lessee
and present owner in and to the said lease and
rights thereunder and unto its successors and as-
signs

And for the same consideration, the undersigned
for themselves and their heirs, successors and rep-
resentatives, do covenant with the said assignee, its
successors or assigns that they are the lawful own-

Defendants' Exhibit No. 2—(Continued)

ers of the said lease and all rights and interests thereunder; that the undersigned have good right and authority to sell and convey the same, and that said rights, interests and property, heretofore acquired by assignors under lease or lease assignment to them are clear and free from all liens and incumbrances (but assignors do not covenant, represent or warrant that the title to said land itself or any part thereof is free of incumbrances), and that all rentals and royalties due and payable thereunder have been duly paid.

In Witness Whereof, The undersigned owners and assignors have signed this instrument this 28th day of April, A. D. 1942.

/s/ JOSEPH FARIA, JR.,

/s/ ESTHER L. FARIA.

Recorded at request of Webster and Webster, Aug. 7, 1947, 9 a.m., in Vol. 672, Page 473, Official Records of Contra Costa County.

Fee \$1.20 paid.

/s/ RALPH CUNNINGHAM,

County Recorder.

State of California,
County of Contra Costa—ss.

On This 28th day of April, A. D. 1942, before me, Chas. A. French, a Notary Public in and for said County and State, personally appeared Joseph Faria, Jr., and Esther L. Faria, his wife, known to me (or proved to me on the oath of), to be

Defendants' Exhibit No. 2—(Continued)

the persons whose names are subscribed to the within Instrument, and acknowledged to me that they executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

/s/ CHAS. A. FRENCH,

Notary Public in and for said County and State.

My commission expires April 26th, 1946.

WAIVER OF CONDITIONS OF LEASE

I, Mary Faria, being the Lessor named in that certain lease entered into on the 11th day of August, 1941, with Bud Hildebrand and Joseph Faria, Jr., do hereby agree with the Lessee named in said lease, his assigns or successors in interest, that should compliance by Lessee with the requirements of paragraph 6 of page 2 of said lease be prevented by any ruling of the United States Petroleum Coordinator, or by any other governmental regulations, then and in such event, I do hereby expressly waive compliance with the provisions of said paragraph by the said Lessee, his assigns or successors in interest.

Dated: May 26th, 1942.

/s/ MARY FARIA,

Lessor.

her X mark

Witness:

/s/ MAE E. ROCHE.

[Endorsed]: Filed Jan. 23, 1947.

DEFENDANTS' EXHIBIT No. 9

(Endorsed): Filed Jan. 23, 1947.



DEFENDANT'S EXHIBIT No. 14

(Endorsed): Filed Jan. 23, 1947.

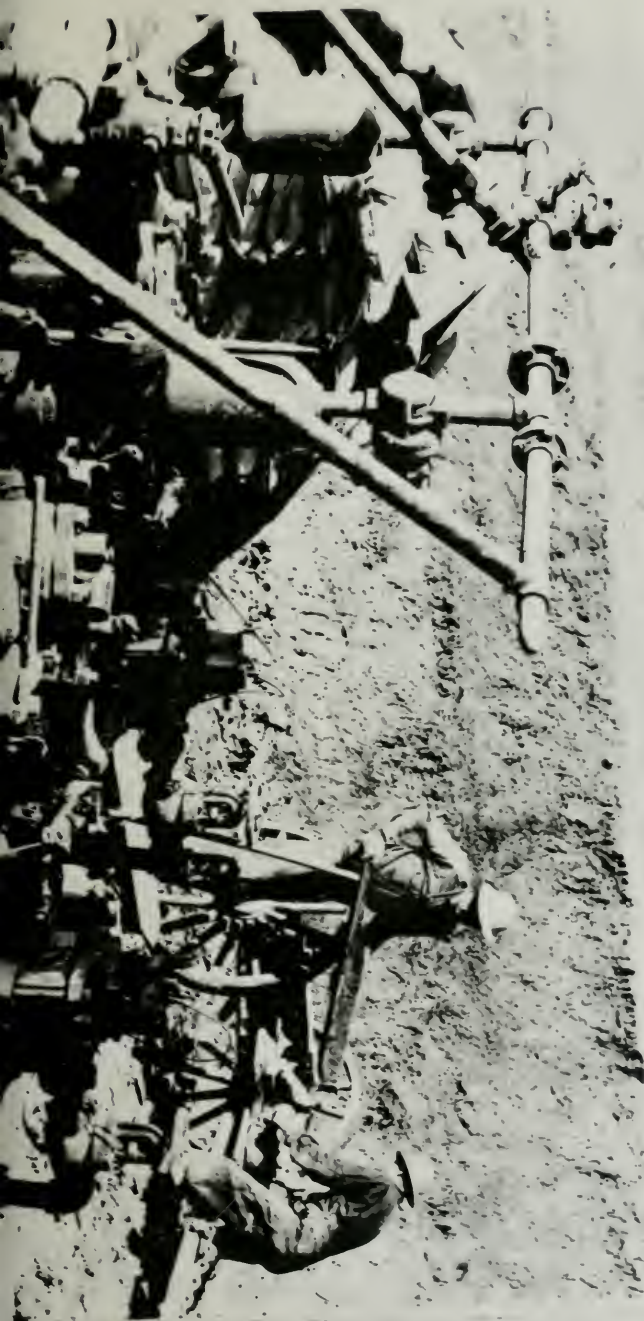


1240



DYE WDAVTS' CHIRIT No. 15

DEFENDANTS' EXHIBIT No. 16
(Endorsed): Filed Jan. 23, 1947.





NAVY DEPARTMENT, WASHINGTON, D. C.
(Endorsed). Filed Jan. 14, 1941.

DEFENDANTS' EXHIBIT No. 19

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

No. 23529-G

UNITED STATES OF AMERICA,

Plaintiff,

vs.

5,430 ACRES OF LAND, more or less, situate in
the County of Contra Costa, State of Califor-
nia, W. J. VON HECKEREN, et al.,
Defendants.

Notice of Termination of Right to Possession of
Parcels 58 and 59 in This Action

To defendant Cal-Bay Corporation, a corporation,
and to Messrs. Fitzgerald, Abbott & Beardsley,
its Attorneys:

You and Each of You will please take notice as follows: That pursuant to the Order of Court modifying Order for Immediate Possession as to Parcels 58 and 59 in this action, dated September 28, 1944, your right to possession of Parcels 58 and 59, as the same are designated in the Complaint and Order for Immediate Possession on file herein, is hereby terminated; that defendant Cal-Bay Corporation may continue in possession and may continue its operations on said Parcels 58 and 59 until thirty (30) days after service of this Notice as provided in said Order of Court; and that there-

upon defendant Cal-Bay Corporation shall forthwith vacate said Parcels 58 and 59 and shall surrender the same to plaintiff.

Reference is made to the said Order of Court dated September 28, 1944, which is incorporated in this Notice by reference.

Dated, December 15, 1944.

/s/ M. MITCHELL BOURQUIN,
Special Assistant to the
Attorney General,
Attorney for Plaintiff.

Receipt of a copy of the foregoing Notice of Termination of Right to Possession of Parcels 58 and 59 in this Action is hereby acknowledged, this 15th day of December, 1944.

FITZGERALD, ABBOTT &
BEARDSLEY,
Attorneys for defendant
Cal-Bay Corporation.

I hereby certify that the annexed instrument is a true and correct copy of the original on file in my office.

Attest:

C. W. CALBREATH,
Clerk, District Court of the U. S., Northern District
of California.

By /s/ L. C. JACOBSEN,
Deputy Clerk.

[Endorsed]: Filed Jan. 23, 1947.

DEFENDANTS' EXHIBIT No. 20

R. P. Obrecht
220 Fourth St.
Antioch, Calif.

November 4, 1943

Mr. Joe Faria
c/o E. M. Woodman
Antioch, Calif.

Dear Mr. Faria:

An Orsat analysis of a sample of gas taken from your well on October 27, 1943, was found to be:

CH ₄	94.5
C ₂ H ₆	0.5
N ₂	5.0
O ₂ , CO ₂ , & CO	Nil

I am enclosing an extra copy which you may forward to Mr. Byron Norris.

Yours very truly,

/s/ R. P. OBRECHT.

[Endorsed]: Filed Jan. 24, 1947.

DEFENDANTS' EXHIBIT No. 21

(Endorsed): Filed Jan. 26, 1947.

46

EXPLORATION

(Chap

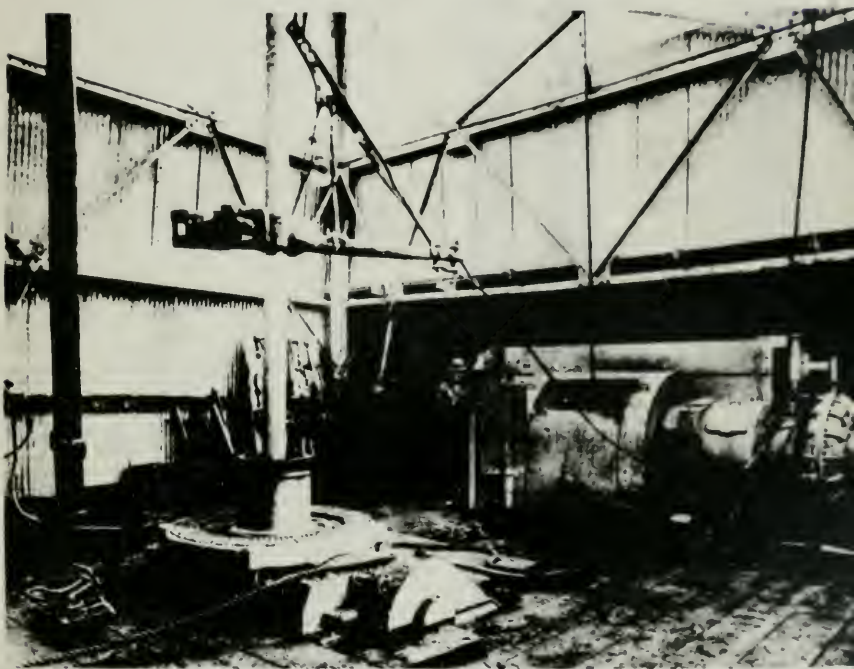


FIG. 19. Interior view of rig. Modern draw-works and rotary table equipped with under-floor drive. (Courtesy of National Supply Co.)

jected in service. The material is more uniform and dependable in its properties than timber. They are lighter and present less surface to the wind. They are not so easily distorted under stress. Steel derricks have a longer life than timber derricks and present less fire hazard. They have a greater salvage value and are readily disassembled and erected at a new location. Steel foundation members are more rigid than timber foundations. Steel rig wheels maintain their original form better than wooden wheels and are mechanically more efficient. Concrete foundation piers, generally used in supporting steel structures, provide a firmer support for the derrick and drilling equipment than timber (Uren, L. C. 34, pp. 126-142).

Steel derricks may be constructed either of structural steel forms or of tubular forms, but in the California fields, the structural steel type has been most used. They have been rigidly standardized as to dimensions and essential features by the American Petroleum Institute and are available from California and eastern manufacturers in size up to 175 ft. in height and 32 ft. square at the base. Constructed of steel of high-tensile strength and suitably reinforced, they are designed for safe working loads as great as 500 tons with a safety factor of two.

ROTARY CORING EQUIPMENT

As previously explained, one of the principal criticisms of the early rotary drilling equipment was that the finely pulverized drill cuttings brought to the surface by the circulating fluid did not afford a satisfactory basis for determining the character of the formation in which the drill was working. Seeking to overcome this difficulty, rotary core barrels were devised to secure undisturbed samples from the formation in the bottom of the well. Early core barrels were of primitive construction designed merely to punch out a short section of the formation, usually but a few inches long. Such samples were often badly "burned" and distorted. Eventually the double-tube core barrel was developed and perfected. Equipped with a suitable cutting head attached to the lower end of the drill pipe in place of the usual drill tool, these improved core barrels are capable of securing cores of the formation penetrated by the well that are often as much as ten feet long and but little distorted. They afford very satisfactory samples for all practical purposes, though in unconsolidated and semi-consolidated formations, they seldom secure more than 75% of interval cored. The remainder, usually the softer strata, are disintegrated by operation of the cutting tool. Cuttings ranging from 2 to 5 inches in diameter are common.

Application of early patterns of core barrels required reaming of the well to enlarge the cored interval to full gauge, but more recent types maintain the full gauge of the hole as the core is cut (U'ren, 1, U' 34, pp 262-268).

One reason why core barrels are not more generously used is the interruption in drilling progress and consequent lost time and expense in making two round-trips in and out of the well with the drill pipe to substitute the coring tool for the ordinary drilling bit, to cut the core and bring it to the surface. This may be avoided by use of a retractable core barrel that can be run to bottom on a wire line through the drill pipe. A special type drill is used with the central portion cut away and equipped with a locking device for engaging the core barrel while the core is being cut. The core barrel and core may then be retrieved and removed on a wire line through the drill pipe; or the drill pipe may be removed, bringing the core barrel and core to the surface. In this case, a core may be cut just before it is planned to remove the drill pipe to replace the drilling bit. Though somewhat smaller than cores cut by ordinary core barrels, they are satisfactory for most purposes.

Most operators now use mechanical coring but sparingly, particularly in testing formations for landing casing and in securing occasional samples of reservoir rocks. On the other hand, there are many instances where an accurate log is desired—as in the drilling of wildcat wells—in which hundreds of feet of formation have been continuously cored. A core is often taken to determine whether a prospective oil-producing sand is oil-saturated or "wet." The presence of oil in a core is often clearly apparent, but if there is little oil, a chloroform, ether, or acetone test may be necessary to determine whether or not oil is present. Presence of gas in a core is usually made apparent by "bleeding" or by frothing and expulsion of fluids from the pore spaces of the core as it is removed from the core barrel.

IMPROVEMENTS IN ROTARY DRILLING BITS

Early drilling with the rotary equipment was accomplished almost entirely with the fish-tail type of bit. This bit served satisfactorily in drilling shallow wells in soft formations, but as deeper drilling became necessary and harder formations were encountered, it became increasingly necessary to develop bits that were capable of drilling harder rocks and of achieving greater footages, requiring less frequent withdrawal of the drill pipe from the wells to change bits. For attaining greater footages in soft and moderately hard formations, disc bits were found useful, first in two-disc patterns, later styles being equipped with four discs and side reamers, in some cases with the edges of the bits "marcelled." For drilling in hard rock formations, fish-tail and disc bits are dulled rapidly and "rock bits" equipped with toothed cones or rollers are much more effective. Roller core bits are available for hard-rock coring. Special types of demountable bits are also effective in moderately hard formations. The Dublin bit, affording an unusual eccentric motion, has been popular in some California fields. Collapsible bits, permitting replacement of the cutting elements without withdrawing the drill pipe have found but limited use as yet.

Early bits were made of tool steel; later, special alloy steels were used, particularly chrome steel. Studies of

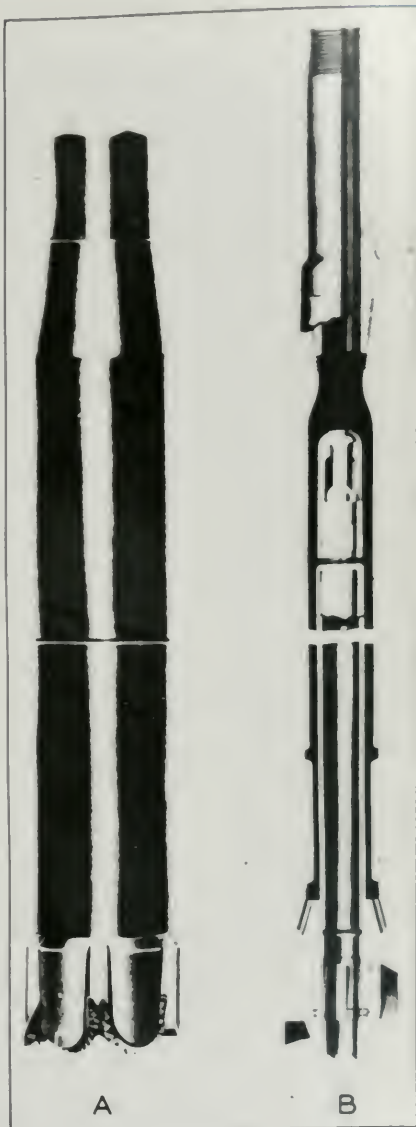


FIG. 20. Examples of modern rotary core barrels.
A. Hughes core bit equipped with hard formation roller head. (Courtesy of Hughes Tool Co.)
B. Elliott rotary core drill. (Courtesy of Elliott Core Barrel Co.)

No. 23529-B
Def't Exhibit No. 21 (Hatched)
Filed JAN 28 1947

C. V. [Signature]

By L. R. Allington
Deputy Clerk

DEFENDANT'S EXHIBIT No. 22
(Endorsed): Filed Jan. 26, 1947.



DEFENDANTS'

EXHIBIT NO. 23

STANDARD OIL COMPANY OF CALIFORNIA

(Endorsed):

Dated 1/28/47.

B 7401

MEMORANDUM OF SALE

Cal. Bay Corporation
P.O. Box 605
Brentwood, Calif.
None

New Vista Calif.

177 1947

SOLD TO

CUSTOMER'S ORDER NO.

QUANTITY

ARTICLE

128 Septe 3923' 4 3/4" O.D. 16 #
Weight 10 x third 1/4 make
thick union. Standard Drilling
@ 70¢ per foot 875.50
4 3/4" O.D. 16 # 70¢ per foot 875.50
Three 1/4" at 35¢
Total 2,550.50

DELIVERY TO BE TAKEN ON OR BEFORE

MATERIAL PURCHASED BY

OF DEPOSIT \$

BUYER Cal Bay Corp. 1/28/47

THE UNDERSIGNED HEREBY CERTIFIES THAT THE GOODS LISTED HEREON ARE PURCHASED FOR RESALE IN THE FORM OF VISIBLE PERSONAL PROPERTY.

BUYER Cal Bay Corp. 1/28/47

PERMIT NO.

STANDARD OIL COMPANY OF CALIFORNIA.

BY David M. Seller

NOTICE

THIS MATERIAL AND/OR EQUIPMENT IS SOLD BY THE SELLER AND ACCEPTED BY THE BUYER IN ITS PRESENT CONDITION AND AT ITS PRESENT LOCATION. THE BUYER ASSUMES ALL RISK OF INJURY TO PERSONS OR PROPERTY ARISING THROUGH ITS USE OR EXISTENCE. THE SELLER HAS EXTREME CAUTION IN HANDLING EMPTY CONTAINERS AS THEY MAY HAVE BEEN USED FOR INFLAMMABLE AND A FIRE OR EXPLOSIVE HAZARD MAY BE INVOLVED.

IDENTIFICATION NO.

AMOUNT

PRICE

70¢ 276 10

35¢ 35 00

AMOUNT FOR MATERIAL

SALES TAX

TOTAL

276 10

64 53

2850 63

CRUIT APPROVED BY

1/4

STOREKEEPER'S APPROVAL

OPERATING DEPT. RELEASE

M. O. JOHNSTON OIL FIELD SERVICE CORPORATION
 177 San Fernando Road
 Los Angeles, California

—Phone—

TEST TICKET

No. 6015

 Los Angeles . . . ALbany 0186
 Bakersfield . . . Phone 2794
 Ventura Phone 5621
 Stockton Phone 1636

Customer's Order No. 10

Date 9-5-43

Name Cal Bay Corp. Well No. 1Address to Mail Invoices 207 First Nat BldgStanton, Calif.District Pittsburg County Contra

FORMATION TEST No.

SHOE TEST No.

Successful No. 1 Mile-run No. Successful No. Mile-run No.Size Hole 9 7/8" Depth Well 4318 Size CasingRet Hole Size 6 1/4" Depth 31 Tool Jt. 4" 4 T. Depth of ShoeFormation Shoulder Shole Test Tool Size 4" 4 T. Open Below ShoeDepth to Shoulder 4287 Sub Size ✓ Packer Set AtPacker Set At 4287 Sub Rented from ✓ Type Packer UsedJar Used (Size) 4" (Make) MCC4110494Type Packer Used Comb Anchor: Size 2 1/2" Length 24 Bottom of Perforation at 281Taper—Turned to 6 1/4" 8 5/8" Pressure Recorder Make TYPE F. Cep 3750 No. 130Rubber—Turned to 8 5/8" Size "Braz" 1/2Drill Pipe: Run Dry with Fluid None

RESULTS

Set Packer M. Open Trip Valve 11:05 P. M. Let Packer Set 18 Mi.Shut In Pressure Time Did Shoulder Hold? YesBlow? Light steady for duration of test.Tared 10 min getting Packer loose.

Fluid Rise

2 Days Service MAX EXPENSES 12.00Day 4's Service 5.00

Time Chargeable to Test

Was Anchor Plugged? ✓ Car No. Dodge T-80Was Tool Plugged? ✓ Mileage charged 400 mile Speedometer End of TripWAS RUBBER DAMAGED? ✓ Speedometer Start of TripTOTAL MILES 500

M. O. Johnston Oil Field Service Corporation shall not be liable for damage of any kind to the property or personnel of the one for whom a test is made or for any loss suffered or sustained, directly or indirectly, through the use of the equipment, or for statement or opinion concerning the result of any test.

Approved [Signature]Oil Inspector [Signature]A test must be made with CHUCK MILLIGAN whether successful or not.No. 23529-BDeft Exhibit No. 24Filed JAN 28 1947

C. W. Conditto, Clerk

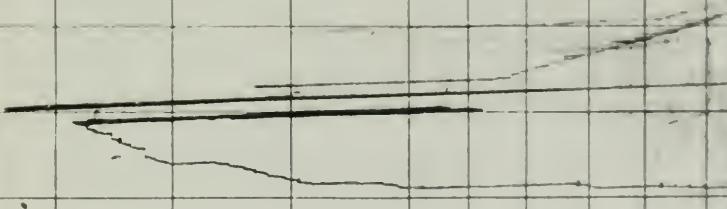
By L R Johnston

M. O. JOHNSTON
OIL FIELD SERVICE CORPORATION.

DEFENDANTS' EXHIBIT No. 24
(Endorsed): Filed Jan. 28, 1947.

LBS.
PER
SQ. IN.
3750
3500
3250
3000
2750
2500
2250
2000
1750
1500
1250
1000
750
500
250
0

DATE. 10-5-43
COMPANY. Cal Day
WELL. Farid #1
LOCATION. Pittsburg
PACKER SET AT. 4287
HOLE OPEN TO. 4318
RECORDER NO. F-130
CAPACITY. 3750#
RECORDER DEPTH. 4311
CALIBRATED. September 24, 1943
TEMPERATURE.
FLUID RISE.
FLOW PERIOD. 18 MIN
SHUT IN PERIOD.
TICKET NO. 6015
PRESSURE.



Form 3

M. O. JOHNSTON OIL FIELD SERVICE CORPORATION

3117 San Fernando Road

Los Angeles, California

—Phones

TEST TICKET

No 6758

Los Angeles ... Albany 0186
 Bakersfield ... Phone 2794
 Ventura ... Phone 5621
 Stockton ... Phone 1636

Customer's Order No. _____

Date 10-21-42

Name 21-521 CFF Well No. _____

Address to Mail Invoice _____ Lease 2472

District 2472 County 2472

FORMATION TEST No. _____ SHOE TEST No. 2

Successful No. _____ Mis-run No. _____ Successful No. 2 Mis-run No. _____

Size Hole _____ Depth Well 4230' Size Casing 2 1/2"

Ret Hole Size _____ Depth Tool Jt. 210' Depth of Shoe 440'

Formation Shoulder _____ Test Tool Size 3 1/2" Open Below Shoe _____

Depth to Shoulder _____ Sub Size 2 1/2" Packer Set At 1200'

Packer Set At _____ Sub Rented from 2 1/2" Type Packer Used _____

Jar Used (Size) _____ (Make) _____

Type Packer Used _____ Anchor: Size 2 1/2" Length _____ Bottom of Perforation at _____

Taper - Turned to _____ Pressure Recorder Make _____ Cap _____ No _____

Rubber Turned to _____ Size Bean _____

Drill Pipe Run Dry 211' with Fluid _____

RESULTS

Set Packer _____ M. Open Trip Valve 2 1/2" M. Let Packer Set _____

Shut In Pressure Time _____ Did Shoulder Hold? _____

Blow? _____

Fluid Rise 100' 1947

Was Anchor Plugged? No

Was Tool Plugged? No

WAS RUBBER DAMAGED? No

Time Chargeable to Test

Car No. _____

Speedometer End of Trip _____

Speedometer Start of Trip _____

TOTAL MILES

M. O. Johnston Oil Field Service Corporation shall not be liable for damage of any kind to the property or personnel of the one for whom a test is made or for any loss suffered or sustained, directly or indirectly, by the use of the equipment, or its statement or opinion concerning the result of any test.

Approved _____
 Oil Representative _____

A ticket must be made with complete information for location, whether successful or not.
 [Endorsed]; Filed Jan. 29, 1947.

No 23529-9

Exhibit No. 27

Filed JAN 29 1947

C. W. _____

By

L. R. Ellington

Deputy Clerk

DEFENDANTS' EXHIBIT No. 30

[Letterhead Byron B. Norris]

November 1, 1943.

Supplemental Report on the Cal-Bay Corporation,
Well No. "Faria" 1, Pittsburg-Concord Area,
Contra Costa County, California.

Pursuant to your request I will outline the development operations at this well to date and state what, in my opinion should be done with respect to future operations.

The well has to date been drilled to a total depth of 4398 feet. During the drilling of this well, ditch samples and cores were gathered and examined by a competent micropaleontologist in order to determine, by means of fossil evidence, what the various formations were and where they should be placed in the geologic column. There were times when there were not sufficient fossils in the samples to definitely identify them. In general the formations encountered show a normal geological column. The result of this work shows the top of the Nortonville Shale at 3500 feet, the top of the Domengine formation at 3820 feet and the top of the Martinez formation at about 4334 feet.

During this drilling operation gas shows were in evidence at many places. While drilling in a hard shale at about 4268 a high pressure gas sand was encountered which showed up on the ditch shortly and for some time threatened to blow the

mud from the hole. Special treatment was given the mud and it was weighted with Baroid until it weighed 96 pounds per cubic foot. This stopped the surging action but gas still broke thru the mud.

This gas sand was encountered while drilling so there was no shoulder available on which to set a cone packer. However, two attempts were made to get a formation test by use of a sidewall packer but were not successful because the packer did not hold.

The hole was cored ahead to a depth of 4398 feet. A Schlumberger survey was made to a depth of 4373 feet and indicated that the zone from which the gas was coming was between depth of 4268 and 4300 feet. Also, a temperature survey was run from depths of 3000 to 4373 feet and indicated gas entering the hole above 4315 with the bulk of it from 4265 to 4300 feet. This temperature survey is based on the theory that gas and oil entering a hole tend to cool it. Of course, it was known that gas was entering this hole because it was breaking thru at the surface. Then 7" O.D., 23 pound casing was cemented at 4343 feet with 150 sacks of cement. To give a shut-off test for the State Division of Oil and Gas, 4 3/9" holes were shot at 4250 to 4251 feet. This test demonstrated a water shut-off. Then the casing was perforated 4269 to 4276 with 22 3/8" holes. This test was made with a Johnston Formation Tester on 3" drill pipe. The test showed an estimated 100,000 cubic feet of gas. There was no water with the gas. Later the casing was per-

forated 4281 to 4289 with 9 1/2" holes. A formation test of all perforations from 4269 to 4289 showed an estimated blow of 125,000 cubic feet of gas. This test indicated that the zone was high pressure gas but the volume was not large due probably to the low permeability of the sand. The Schlumberger survey also indicated the possibility of a low permeability sand. There was no water with the gas.

The bottom hole pressure bomb from the Johnston formation tester showed bottom hole pressures from 200 to 2125 pounds on this zone over a period of one hour.

A sample of this gas was taken by Mr. R. P. Obrecht, chemist for the Dow Chemical Company who reports as follows:

An Orsat analysis of a sample of gas taken from your well on October 27, 1943, was found to be:

CH ₄	94.5
C ₂ H ₆	0.5
N ₂	5.0
O ₂ , CO ₂ , & CO	Nil

The above indicates that the gas obtained is a good commercial grade of gas.

Later the hole was perforated with 4 1/2" holes between depths of 3768 and 3769 feet. On test this zone showed salt water. It will be necessary to cement off these perforations with a squeeze job at a later date.

With respect to future operations, after exam-

ining all the facts we have before us, it is my opinion that this hole should be deepened in the hope that sand formations will be encountered which will contain gas in large volume. The drilling and testing so far has demonstrated that at this location there is a structure capable of holding high pressure gas of good quality.

From the standpoint of formations to be encountered and correlating with the producing zones in neighborhood gas fields, I find that there are two known possibilities. The first is the sand below the Martinez shale. This is the producing sand in the McDonald Island Gas Field which is one of the nearest producing gas fields to this location. At the present time, based on the analysis of the micro-paleontologist, the well is now drilling in Martinez shale. Below this, formations of Cretaceous Age will be encountered. There may be production from any sand formation encountered. However, with the neighboring Tracy Gas Field producing from formations of Cretaceous Age, it seems that it is quite likely that given the structural conditions known to exist that gas can be produced from that formation.

There is 6000 feet of 3" drill pipe at the rig now. In the writers' opinion it would be well to prepare to drill another 2000 feet if necessary in order to test any possible producing formations that may be encountered in the balance of the Eocene formations and in the top of the Cretaceous formations. It is possible that a commercial gas sand may be

encountered at any future depth. There is not sufficient data available to definitely tie down the thickness of the various formations to be encountered, so the writer recommends a test of all likely formations encountered in the next 2000 feet of this hole.

Respectfully yours,

/s/ BYRON B. NORRIS,

Petroleum Engineer.

BBN/m

[Endorsed]: Filed Jan. 30, 1947.

DEFENDANTS' EXHIBIT No. 31

[Letterhead Paul P. Goudkoff]

November 10, 1944

Mr. Byron B. Norris,
1009 Subway Terminal Building,
Los Angeles, California.

California Bay Corp. Faria #1 Well

Report on examination of 2 core samples from
4823'-4843' interval.

Formation:

4823'-4843'—Dark gray, impure sand grading into
massive sandy shale. Contains no
organic remains except scattered car-
bonaceous particles.

Remark:

Because of the lack of diagnostic organic re-
mains, the age of the formation represented by
samples cannot be determined. Lithologically the
samples resemble some of those obtained from the
Cerro member (Meganos stage of Clark and
Vokes) cored by the Standard Oil Community
Suisun well #1.

Respectfully submitted

/s/ PAUL P. GOUDKOFF.

[Endorsed]: Filed Jan. 30, 1947.

DEFENDANTS' EXHIBIT No. 34

Commandant's Office

Navy Yard, Mare Island, California

Address Reply to the Commandant, and Refer to
No. NT1-62 (502-676790)

20 May 1944

Mae E. Roche
Concord, California

Dear Madam:

The Government wishes to obtain certain information which will be facilitated by having a surveying party enter upon your property in the Clayton Valley east of Concord, Calif.

It is requested that you give your permission for this party to make the desired survey by signing in the place indicated and returning the attached copy of this letter in the envelope furnished.

Your prompt cooperation in granting this permission will be of material assistance in forwarding an important war project.

By direction of the Commandant.

Very truly yours,

/s/ F. C. BEDELL,

Captain (CEC), U.S.N.,
Public Works Officer

Permission granted:

May 1944.

date

Signature

Certified to be a true copy.

/s/ J. R. DAVIS,

Comdr. (CEC) U.S.N.

[Letters addressed to Mary Faria, Route 2, Box 120, Concord, California, and Edward Faria, Clayton Road, Concord, California, which are part of this exhibit, are identical with the letter above set out in full and addressed to Mae E. Roche, Concord, California, except as to names and addresses.]

[Endorsed]: Filed Feb. 4, 1947.

DEFENDANTS' EXHIBIT No. 35 SUBMIT LOG IN DUPLICATE

FILL THIS BLANK IN WITH TYPEWRITER. WRITE ON ONE SIDE OF PAPER ONLY

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

WELL SUMMARY REPORT

quintuplicate
File

Operator Calday Corporation Field 0000

Well No. Paris #1 Sec. 21 T. 2 N. R. 1 W. B. & M.

Location 2165 feet south and 1260 E. from Elevation of derrick floor above sea level 411 (around) loc. 421 R.T.

In compliance with the provisions of Chapter 93, Statutes of 1939, the information given herewith is a complete and correct record of the present condition of the well and all work done thereon, so far as can be determined from all available records.

Date January 15, 1945
By H. W. Norris
H. W. Norris Jr. J. P. del'Eau
(Engineer or Geologist) (Superintendent)

Signed Joseph L. Smith
Title Pres. Cal. By Corp.
(President, Secretary, Agent)

Commenced drilling July 14, 1943 Completed drilling Dec. 1944 Drilling tools Cable Kelly

Total depth 4975 Plugged depth 3447 GEOLOGICAL MARKERS DEPTH

Junk 5" Drill collar & bit stuck at shoe of 7" casing at 4345 ft. 5" Drill pipe, Drill collar & 6-5/8" bit in reworked hole 4730-4150 ft. 7" casing drilled through and sidetracked below 4150 ft.
Top Bartonville Shale - 3500 ft ±
Top Domingue Formation - 3820 " ±
Top Martins Formation - 4334 " ±

Commenced producing _____ Flowing/gas lift/pumping (check one)

Initial production

Production after 30 days

Clean Oil bbl. per day	Gravity Clean Oil	Per Cent Water including emulsion	Gas Mcf. per day	Tubing Pressure	Casing Pressure
N O T E :					
See footnote page 9					

CASING RECORD (Present Hole)

Depth of Shoe	Top of Casing	Weight of Casing	New or Second Hand	Seamless or Lapweld	Grade of Casing	Size of Hole Casing landed in	Number of Sacks of Cement	Depth of Cementing of through perforations
610	Surface	450	New	Seamless	-	1 1/2"	440	-
1345	Surface	25	New	Seamless	3-55	9-5/8"	150	-

PERFORATIONS

From	To	Size of Perforations	Number of Rows	Distance Between Rows	Method of Perforations
3520 ft.	3521 ft.	1/2"			Spot - 4 holes
3760 ft.	3761 ft.	"			"
4250 ft.	4251 ft.	3/8"			"
4270 ft.	4280 ft.	1/2"			"
4281 ft.	4289 ft.	1/2"			"

Electrical Log Depths 610 to 1375 feet

(Attach Copy of Log)

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

LOG AND CORE RECORD OF OIL OR GAS WELL

Operator Cal-Bay Corporation Field - - - -

Well No. Faria # 1 Sec. 21 T. 2 N R. 1 W M.D. B. & M.

FORMATIONS PENETRATED BY WELL

DEPTH TO		Thickness	Drilled or Cored	Recovery	DESCRIPTION
Top of Formation	Bottom of Formation				
Surface	84	84	Drilled		Gravel with streaks of shale
84	150	66	"		Hard sand and gravel
150	212	62	"		Hard sand and streaks of clay
212	267	55	"		Shale and boulders
267	363	96	"		Hard sand and shale
363	416	53	"		Hard sandy shale
416	457	41	"		Hard sand and streaks of shale
457	526	69	"		Hard sandy shale.
526	590	64	"		Hard sand and shale
590	633	43	"		Shale
633	685	52	"		Hard sand and shale
685	728	43	"		Sandy shale
728	785	57	"		Shale and sandy shale
785	807	22	"		Gray sand and shale
807	831	25	Cored	13 ft.	Fine gray sand-considerable mica
831	971	140	Drilled		Sandy shale
971	1043	72	"		Gray sand and shale
1043	1038	45	"		Hard sand with streaks of shale
1038	1110	22	"		Shale
1110	1220	110	"		Sandy shale
1220	1260	40	"		Sand and shale
1260	1290	30	"		Brown shale
1290	1305	15	"		Conglomerate (green)
1305	1376	71	"		Yellow clay and conglomerate
1376	1436	60	"		Shale
1436	1450	14	"		Sand and shale
1450	1530	30	"		Tough shale
1530	1584	54	"		Conglomerate & tough shale
1584	1596	12	Cored	9 ft.	Light brown shale with green and white nodules.
1596	1609	13	Drilled		Hard shale
1609	1650	41	"		Tough shale
1650	1753	100	"		Shale and conglomerate with sand
1753	1805	52	"		Shale and hard sand
1805	1827	22	"		Tough shale
1827	1376	49	"		Shale and conglomerate.
1876	1974	93	"		Shale and sandy shale
1974	2008	34	"		Hard sand and shale
2008	2060	52	"		Hard shale and conglomerate
2060	2124	64	"		Hard sand and streaks of shale
2124	2166	42	"		Hard sand
2166	2220	56	"		Hard shale and streaks of sand.
2220	2288	68	"		Hard sandy shale
2288	2314	26	"		Hard sand & tough brown shale
2314	2327	13	"		Tough shale

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

LOG AND CORE RECORD OF OIL OR GAS WELL

Operator _____ Field _____

Well No. _____ Sec. _____, T. _____, R. _____, S. _____

FORMATIONS PENETRATED BY WELL

DEPTH TO		Thickness	Drilled or Cored	Recovery	DESCRIPTION
Top of Formation	Bottom of Formation				
2327	2411	84	Drilled		Hard shale and streaks of sand
2411	2425	14	"		Hard sand and shell-Black shale
2425	2451	26	"		Hard black shale (2425
2451	2461	10	Drilled		Hard shale
2461	2471	10	"		Sand
2471	2490	19	"		Streaks of sand and shale
2490	2504	14	"		Hard shale
2504	2557	53	"		Streaks of hard sand & shale
2557	2575	18	"		Sandy shale
2575	2620	45	"		Hard sand-streaks of shale
2620	2634	14	"		Sand and shale
2634	2637	3	Cored	1	Fine grained gray sand.
2637	2665	28	Drilled		Sand and shale
2665	2668	3	"		Sand
2668	2675	7	"		Hard shale
2675	2679	4	"		Sand
2679	2683	4	"		Shell
2683	2719	36	"		Hard sand and shale
2719	2725	6	"		Sand and shale
2725	2739	14	"		Hard sand and shale
2739	2749	10	"		Sand and shale
2749	2752	3	"		Hard black shale
2752	2764	12	"		Hard sand
2764	2768	4	"		Sticky yellow clay
2768	2780	12	"		Hard sand
2780	2786	6	"		Hard black shale
2786	2821	35	"		Streaks of sand and shale
2821	2843	22	Cored	18	4 ft. hard brown shale
					14 ft. gray sand
2843	2905	62	Drilled		Streaks of hard sand and shale
2905	2930	25	"		Soft sand
2930	2942	12	"		Black shale
2942	3000	58	"		Hard sand and shale
3000	3014	14	"		Hard sand
3014	3028	14	"		Hard sand-streaks of tough shale
3028	3144	116	"		Hard sand and shale
3144	3154	10	"		Hard shale
3154	3253	99	"		Hard sand and shale
3253	3270	17	"		Hard shale with streaks of sand
3270	3284	14	"		Hard brown shale
3284	3298	14	"		Hard sand
3298	3393	95	"		Hard streaks of sand and shale
3393	3405	12	"		Shale and sand - good oil and gas
					showings on ditch
3405	3425	20	Cored	6	6 ft. sandy gray shale.

STATE OF CALIFORNIA
 DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

LOG AND CORE RECORD OF OIL OR GAS WELL

Operator _____ Field _____

Well No. _____ Sec. _____, T. _____, R. _____ B. & M. _____

FORMATIONS PENETRATED BY WELL

DEPTH TO		Thickness	Drilled or Cored	Recovery	DESCRIPTION
Top of Formation	Bottom of Formation				
3425	3454	29	Drilled		Hard sand and shale
3454	3499	45	"		Hard shale
3499	3506	7	"		Tough brown shale
3506	3528	20	Cored	12	Dark gray sandy shale
					Dried concoloidal fracture
3528	3567	39	Drilled		Hard shale
3567	3590	23	"		Hard shale
3590	3625	35	"		Hard sandy shale
3625	3635	10	"		Hard shale
3635	3645	10	"		Shale and sand- some gas showings
3645	3697	52	"		Hard shale
3697	3712	15	Cored	15	Dark brown shale
3712	3717	5	"	4	Hard gray platy shale
3717	3765	48	Drilled		Hard shale
3765	3776	11	"		Hard sand and shale streaks
3776	3848	72	"		Hard shale
3848	3901	53	"		Hard sandy shale
3901	3906	5	"		Sand
3906	3920	14	"		Sand and streaks of shale
3920	3925	5	"		Soft sand and shale
3925	3932	7	"		Tough shale
3932	3964	32	"		Hard sandy shale
3964	4058	94	"		Hard sand and shale
4058	4030	22	Cored	21	9 ft. gray sand- 4 ft. hard dark gray sandy shale - 10 ft. gray sand- all contained carbonateous material
4080	4104	24	Drilled		Sand and shale
4104	4125	21	Cored	6	Fine gray sand with carbonateous material
4125	4158	33	Drilled		Sand with streaks of hard sand
4158	4160	2	"		Hard sand or shell
4160	4184	24	"		Hard sand
4184	4191	7	"		Hard sand and shale
4191	4209	18	"		Loose sand and hard shale
4209	4236	27	"		Sticky brown shale
4236	4255	19	"		Hard sandy shale
4255	4268	13	"		Hard brown shale
4268	4275	7	"		Sand - Lots of gas
4275	4277	2	"		brown shale
4277	4287	10	"		Tough shale
4287	4303	16	Cored	15	10 ft. gray sandy shale with black carbonateous material in part - 2 ft. fine gray sand - 3 ft. sandy shale.

STATE OF CALIFORNIA
 DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

LOG AND CORE RECORD OF OIL OR GAS WELL

Operator _____ Field _____
 Well No. _____ Sec. _____, T. _____, R. _____ B. & M. _____

FORMATIONS PENETRATED BY WELL

DEPTH TO		Thickness	Drilled or Cored	Recovery	DESCRIPTION
Top of Formation	Bottom of Formation				
4303	4318	15	Cored	15	10 ft. gray shale with gray sand Partings-badly fractured- 5 ft. dark brown shale-platey.
4318	4337	19	"	15	3 1/2ft. dark brown shale with thin partings of gray sand - 21/2 ft. hard sandstone shell - 9 ft. of dark brown shale. 35° dip.
4337	4356	19	"	9	Dark brown shale with partings of gray sand - badly fractured - some slickensides.
4356	4375	19	"	18	15 ft. tight coarse gray sand - 3 ft. dark brown fractured shale.
4375	4398	23	"	9	9 ft. hard dark brown shale with 2 to 4 inch sandstone shells scattered throughout the column.
4398	4418	20	Drilled		Hard sand
4418	4430	12	Cored	11	Hard brown shale-top 3 ft. fractured
4430	4494	64	Drilled		Hard shale and sand
4494	4513	19	"		Hard sand and shale
4513	4549	36	"		Hard shale and sand
4549	4624	75	"		Hard shale
4624	4680	56	"		Sandy shale
4680	4790	110	"		Sandy shale with hard streaks
4790	4811	21	"		Shale
Re-Drilled Formations from 4158 to 4201 - Not Logged					
4201	4211	10	Drilled		Shale
4211	4271	60	"		Sand
4271	4285	14	Cored	9	8 ft. sandy gray shale - 3 ft. fine grained gray sand with partings of Shale (coal
4285	4296	11	Drilled		Sand
4296	4391	95	"		Sand & Shale - gas showing
4391	4414	23	"		Shale
4414	4516	102	"		Hard & sticky shale
4516	4535	19	"		Sand-streaks of hard sand
4535	4555	20	"		Hard shale
4555	4574	19	"		Sand & shale
4574	4608	34	"		Shale
4608	4623	15	"		Hard shale-streaks of sand
4623	4671	48	"		Sand and shale
4671	4724	53	"		Hard shale
4724	4757	33	"		Sticky shale-hole is sluffing
4757	4785	28	"		

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

LOG AND CORE RECORD OF OIL OR GAS WELL

Operator _____ Field _____

Well No. _____ Sec. _____ T. _____ R. _____ S. & M. _____

FORMATIONS PENETRATED BY WELL

DEPTH TO		Thickness	Drilled or Cased	Losses	DESCRIPTION
of Formation	Bottom of Formation				
175	1708	3	Drilled		Shale
178	1623	35			Sand, strong show of gas
183	1641	18	Cased	18	8" hard sandstone shell
181	1662	21	Drilled		17" - 1/4 in. hard gray sandy shale
186	1670	8			Sandy shale, shale
170	1681	11			Shale and sand
181	1685	4			Shale
183	1688	3			Sand, oil & gas on ditch, gas ignited
184	1692	4			Shale
182	1696	6			Shale and sand
194	1698	5			Sand
193	1907	1			Shale
197	1908	1			Sand
198	1950	21			Shale
190	1958	8			Sand - heavy gas flow
194	1951	15			Shale - thin streaks of sand
191	1975	24			Sandy shale
					Sand and shale - heavy gas flow and light oil - well blow out.

SUBMIT IN DUPLICATE
STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

History of Oil or Gas Well

OPERATOR Cal-Bay Corporation FIELD - - - - -

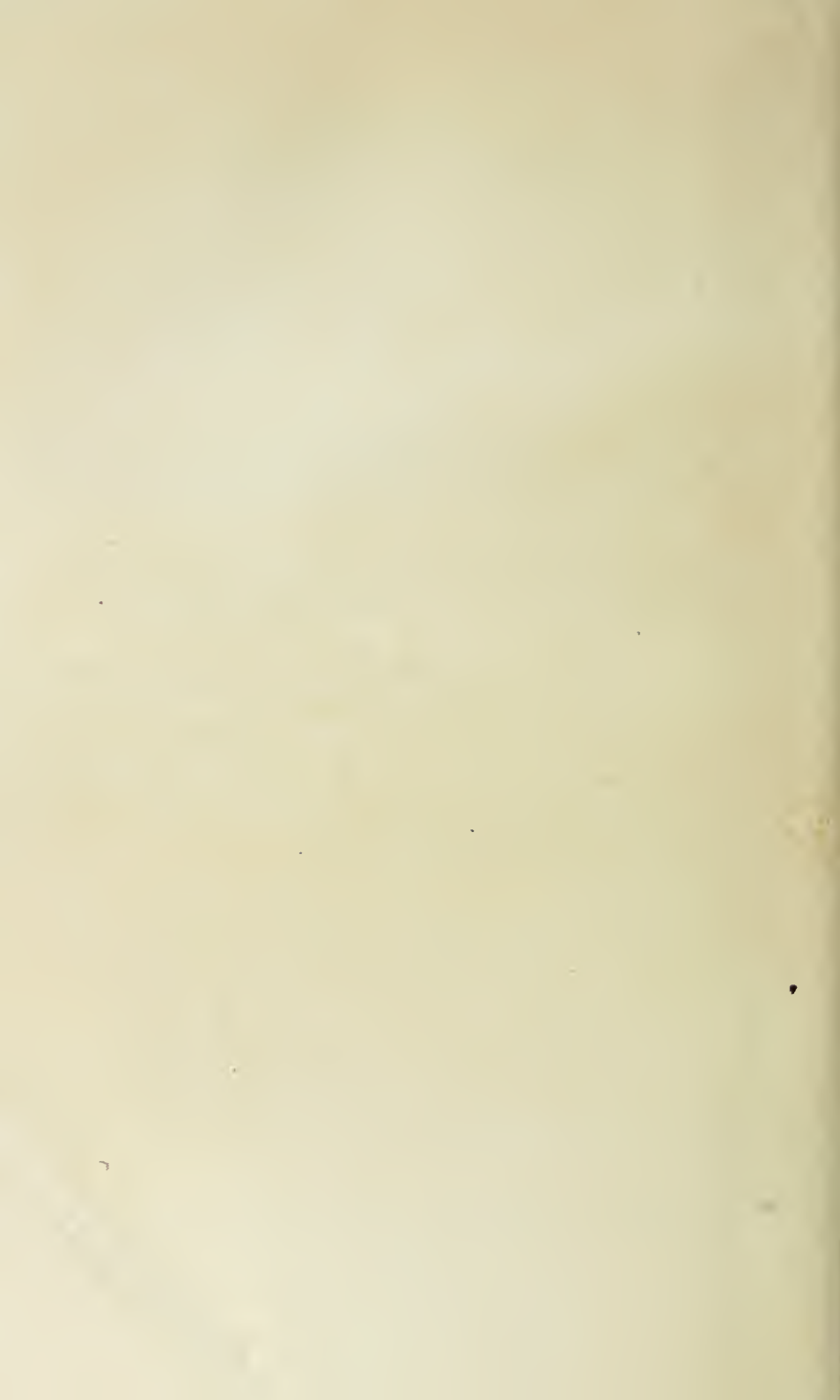
Well No. "Faria" # 1 , Sec. 21 , T. 2 N , R. 1 W , S.D. B. & M.

Signed _____

Date January 15, 1945 Title _____
(President, Secretary or Agent)

Use this form in reporting all important operations at the well, together with the dates thereof, in the order of their performance. Such operations include drilling, re-drilling, deepening, plugging, or altering casing as by perforating, shooting, or pulling. Include in your report size of hole drilled, re-drilled, or deepened; size, weight and length of casing landed, cemented, or removed; amount and location of perforations; number of sacks of cement used in cementing or plugging operations; number of feet of cement drilled out of casing; location of top and bottom of cement plugs. If the well was dynamited, give data, dimensions and weights of all shots. If tests were made give interval tested and results of tests, such as, amount and nature of fluids recovered.

1943
July 14 Spudded in drilling a 15" hole.
" 18 Run 10 3/4" - 45# casing and cemented at 613 ft. with 440 sacks of construction cement.
" 20 Drilling and coring ahead making 9 5/8" hole.
Aug. 28 Ran Schlumberger.
Sept. 1 Shut down - waiting on core analysis.
Sept. 24 Struck heavy gas flow at depth of 4263 ft. Had to circulate till Sept. 29 to kill gas. Put in new mud and 620 sacks of Baroid.
" 29 Ran Schlumberger.
" 30 Ran Johnston Formation tester - sidewall packer failed to hold - Depth 4277 ft.
Oct. 1 Ran Johnston Formation tester - sidewall packer failed to hold - Depth 4303 ft.
" 5 Ran Johnston Formation tester on snoulier at 4237 ft. Tester open 17 minutes - Light steady blow . Depth 4313 ft.
" 9 Ran Schlumberger - Depth 4375 ft.
" 13 Cemented 7 inch C.D. - 23# new casing at 4343 ft. with 150 sacks of Golden Gate Cement.
" 20 Shot perforated 4 - 3/8" holes - 4250-4251 by S chlumberger. Ran Johnston Formation Tester - Packer at 4240 ft. Formation tester open 1 hour - 40 ft. mud fluid in 3" pipe - no water.
" 21 Shot perforated 7" casing 4259-4276 with 22 - 3/3# holes - Shot by S chlumberger - Ran Johnston Formation Tester - valve open 4 A.M. - Estimated blow 100,000 cubic feet of gas. Well closed in end at 3 A.M. had built up a pressure of 700 lbs.
" 27 Shot perforated 7" casing 4231-4239 ft. with 9 - 1/2" holes and 3763-3769 with 4 - 1/2" holes. Shot by Schlumberger. Ran Johnston Formation Tester - Packer at 4240 ft. - valve open 1 2/3 hours - Estiated blow 125,000 cubic feet of gas. Maximum bottom hole pressure 2125 lbs. Pulled up and set packer at 3760 ft. to test perforations at 3763 to 3769 ft. Test showed upper perforations wet.
" 29 Temporarily suspended operations on well.
1944
July 8 Resumed operations on well.
" 11 Shot perforated 7" casing 4270 to 4280 ft. - 23 - 1/2" holes - cact. of Accollough.



SUBMIT IN DUPLICATE

STATE OF CALIFORNIA
 DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

History of Oil or Gas Well

OPERATOR _____ FIELD _____

Well No. _____, Sec. _____, T. _____, R. _____, B. & M. _____

Signed _____

Date _____ Title _____
 (President, Secretary or Agent)

Use this form in reporting all important operations at the well, together with the dates thereof, in the order of their performance. Such operations include drilling, re-drilling, deepening, plugging, or altering casing as by perforating, shooting, or pulling. Include in your report size of hole drilled, redrilled, or deepened; size, weight and length of casing landed, cemented, or removed; amount and location of perforations; number of sacks of cement used in cementing or plugging operations; number of feet of cement drilled out of casing; location of top and bottom of cement plugs. If the well was dynamited, give date, dimensions and weight of all shots. If tests were made give interval tested and results of tests, such as, amount and nature of fluids recovered.

1944
 1.14 Ran 2 1/2" tubing to 4240 ft. Packer at 4140 ft. Swabbed well but could not get enough gas to make it commercial.
 24 Shot perforated the 7" casing - 4 - 1/2" holes at 3520 and 4 - 1/2" holes at 3880 ft. Pumped in 45 sacks of cement under pressures up to 2300 lbs. to seal off perforations.
 25 Drilling ahead making 6 1/4" hole.
 26 Drilling at 4811 ft. Heavy gas showing. Having trouble with heaving shale.
 22 Pulled 3" drill pipe in two - 6 stands down
 Fishing for 3" drill pipe. Recovered all but drill collar and bit
 25 stuck in shoe of casing at 4343 ft.
 25 Well idle
 29 Rigging up - Continued fishing to Oct. 6 but could not recover fish.
 29 Pumped in 20 sacks of cement at 4343 ft. for plug below window.
 7 Top of plug at 4357.
 8 Milling window in 7" casing - 18 ft. long - from 4158 to 4176.
 11
 15 Set Maass-Ross whipstock 3°. Angle oriented East. Drilling ahead making 6 1/4" hole
 22 Drilling at 4785 - Hole is sluffing - Had to use Baroid to get back to bottom - Heaving shale
 27 Got back to bottom
 8 Pipe stuck - spotted oil
 9 Worked pipe free
 21 Started to make new hole
 23 When well is closed in Top hole pressure goes to 1800 lbs. Takes 115/ mud to hold down.
 25 Pipe stuck - 2 stands and a single off bottom.
 27 Spotted oil
 29 Well blew out at 11:00 A.M. Very heavy gas pressure. Sprayed light oil to top of derrick. Took 2 hours to bring under control.
 30 Mixing mud and Baroid. Lost circulation - could not regain circulation under 3700/ pump pressure.
 5
 6 Started to left hand out drill pipe - backed off 19 stands and a single.

SUBMIT IN DUPLICATE
 STATE OF CALIFORNIA
 DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

History of Oil or Gas Well

OPERATOR _____ FIELD _____

Well No. _____, Sec. _____, T. _____, R. _____, B. & M. _____

Signed _____

Date _____ Title _____

(President, Secretary or Agent)

Use this form in reporting all important operations at the well, together with the dates thereof, in the order of their performance. Such operations include drilling, re-drilling, deepening, plugging, or altering casing as by perforating, shooting, or pulling. Include in your report size of hole drilled, re-drilled, or deepened; size, weight and length of casing landed, cemented, or removed, amount and location of perforations; number of sacks of cement used in cementing or plugging operations, number of feet of cement drilled out of casing, location of top and bottom of cement plugs. If the well was dynamited, give date, dimensions and weight of all shots. If tests were made give interval tested and results of tests, such as, amount and nature of fluids recovered.

Run wash pipe - could not get below 4153 ft. Top of fish 4134 ft.
 Concluded casing has collapsed on drill pipe above window in 7" at
 4150 ft. Left 604 ft. 3" drill pipe, drill collar and bit in hole.
 Making decision as to future operations.

Personal service made on Company attorney by U.S. Navy, being a formal
 notice of possession, to take effect January 15, 1945, including part
 of land and well.

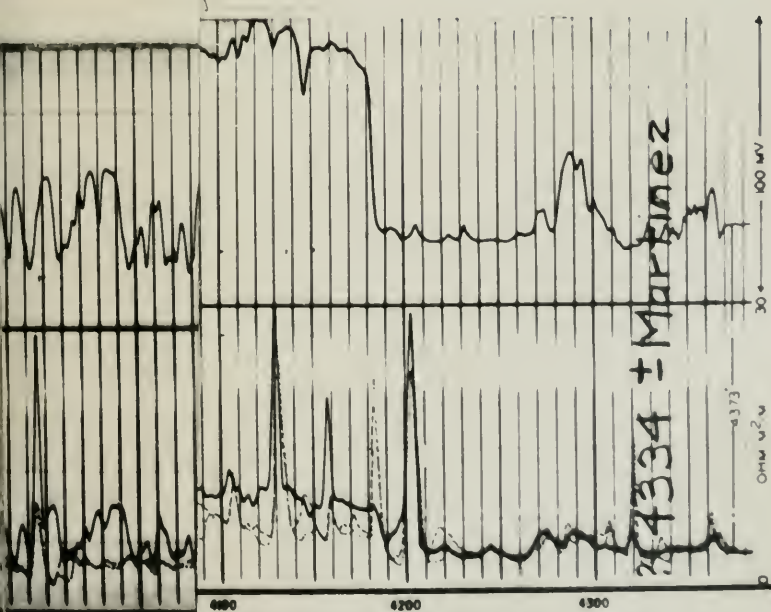
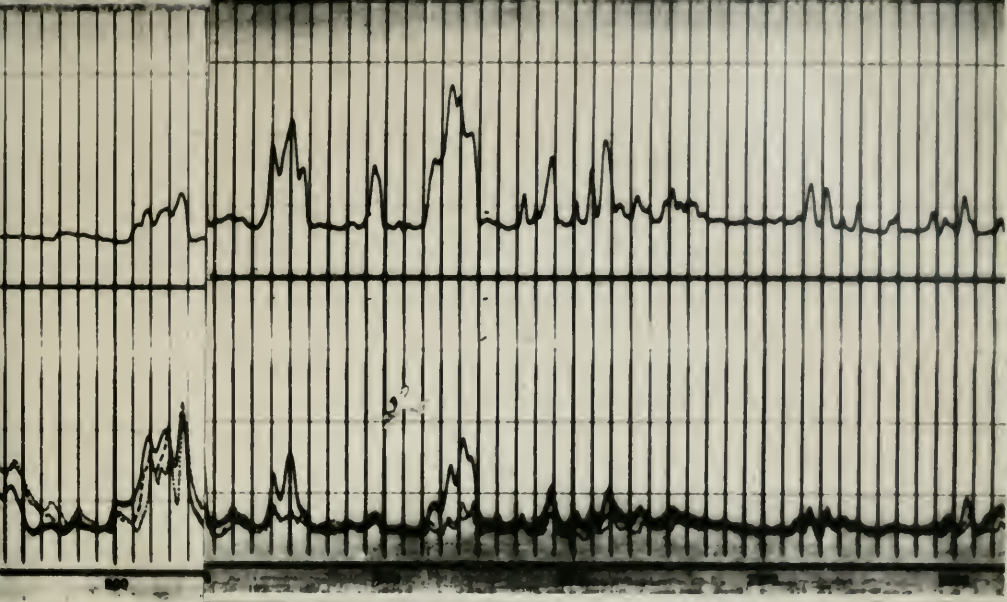
Cleaned out to 4134 ft.
 Pumped in 60 sack of Mt. Diablo cement through drill pipe hanging at
 4134 ft..
 Pulled up to 3804 ft. and pumped in 65 sacks of cement.
 Found top of cement plug at 3447 ft.

Filled hole with heavy mud and welded cap on 7" and 11-3/4" casing.
 Removed derrick and equipment.
 Cleaned up well location.

NOTE: This well has undoubtedly made a gas and oil discovery, but
 the completion of the well as a commercial producer, could not be
 effected, as over one-half of the leased lands of Cal Bay Corp.,
 including the well, was condemned by the U. S. Government, for use
 of the Navy, as part of the lands to be incorporated in the Fort
 Chicago Ammunition Storage Area, in accordance with previous notices.

Endorsed 3-1-45

No 23529-5
 Defts Exhibit No. 35 (Ident)
 Filed FEB 4 1947
 C. W. Carleton, Clerk
 By L. R. Ellington
 Deputy Clerk



CAL-BAY CORP
PITTSBURG AREA
FARIA 1

Form 3

PLAINTIFF'S Exhibit N

M. O. JOHNSTON OIL FIELD SERVICE CORPORATION

3117 San Fernando Road

Los Angeles, California

—Phones

TEST TICKET

No. 6201

Los Angeles ... Albany 0186

Bakersfield ... Phone 2794

Ventura ... Phone 5421

Stockton ... Phone 1636

Customer's Order No. _____

Date

10-27-43

Name Cal-Buy Corp.Well No. 1Address to Mail Invoice 15445 Buena Vista Lane, FullertonSTOCKTON, CALIFDistrict Southern County Orange

FORMATION TEST No. _____

SHOE TEST No. 2

Successful No. _____

Mile-run No. _____

Successful No. 2

Mile-run No. _____

Size Hole _____

Depth Well 9220'Size Casing 7"

Rot Hole Size _____

Depth _____

Tool Jt. 2 1/24 1/2" x 2 1/2"Depth of Shoe 9220'-9220'

Formation Shoulder _____

Test Tool Size 1"

Open Below Shoe _____

Depth to Shoulder _____

Sub Size _____

Packer Set At 9240

Packer Set At _____

Sub Rented from _____

Type Packer Used Cal

Jar Used (Size) _____

(Make) _____

Type Packer Used _____

Anchor Size _____

Length _____

Bottom of Perforation at _____

Taper—Turned to _____

Pressure Recorder Make _____

Cap _____

No. _____

Rubber—Turned to _____

Size Bean _____

Drill Pipes Run Dry _____

with Field _____

RESULTS

Set Packer _____

— M. Open Trip Valve _____

— M. Let Packer Set 4 1/2"

Shot in Pressure Time _____

Did Shoulder Hold? YES

Blow? _____

1st Blow - 1000' - 1st to Surface1100'1200' - 12500' - 1st

Fluid Rise _____

TEST O.K.

Was Anchor Plugged? NoWas Tool Plugged? No

WAS RUBBER DAMAGED? _____

Time Chargeable to Test _____

Car No. _____

Speedometer End of Trip _____

Speedometer Start of Trip _____

TOTAL MILES _____

Approved _____

Our Representative _____

M. O. Johnston Oil Field Service Corporation shall not be liable for damage of any kind to the property or personnel of the one for whom a test is made or for any loss suffered or sustained, directly or indirectly through the use of its equipment, or its statement or opinion concerning the result of any test.

A ticket must be made with complete information for each run, whether successful or not.

Form 3

PLAINTIFF'S Exhibit N

M. O. JOHNSTON OIL FIELD SERVICE CORPORATION

3117 San Fernando Road

Los Angeles, California

—Phone—

TEST TICKET

No. 6201

Los Angeles ... Albany 0186

Bakersfield ... Phone 8794

Ventura ... Phone 5621

Stockton ... Phone 1636

Customer's Order No. _____

Date 10-27-43

Name Cal-Bay Corp. Well No. 1
 Address to Mail Invoices 15 N. Buena Vista Lane, Fullerton
STOCKTON, CALIF. District SAN JOAQUIN County SAN JOAQUIN

FORMATION TEST No. _____ SHOE TEST No. 3Successful No. _____ Mile-run No. _____ Successful No. 3 Mile-run No. _____Size Hole _____ Depth Well 9220' Size Casing 7"Rot Hole Size _____ Depth _____ Tool Jt. 2 1/2" H. & S. Depth of Shoe 9220'-9220'Formation Shoulder _____ Test Tool Size 5" Open Below Shoe _____Depth to Shoulder _____ Sub Size _____ Packer Set At 7240Packer Set At _____ Sub Rented from _____ Type Packer Used C-1

Jar Used (Size) _____ (Make) _____

Type Packer Used _____ Anchor: Size _____ Length _____ Bottom of Perforation, at _____

Taper—Turned to _____ Pressure Recorder—Make _____ Cap _____ No. _____

Rubber—Turned to _____ Size Bees _____

Drill Pipe: Run Dry _____, with Fluid _____

RESULTS

Set Packer _____ — M. Open Trip Valve _____ — M. Let Packer Set 425Shut in Pressure Time _____ Did Shoulder Hold? YESBlow? 10000 MAGNET - 150 TO SURFACE INWATERWITH 10000 MAGNET - 150 TO SURFACE IN

Fluid Rise _____

Test O.K.

Was Anchor Plugged? NWas Tool Plugged? N

WAS RUBBER DAMAGED? _____

Time Chargeable to Test _____

Car No. _____

Speedometer End of Trip _____

Speedometer Start of Trip _____

TOTAL MILES _____

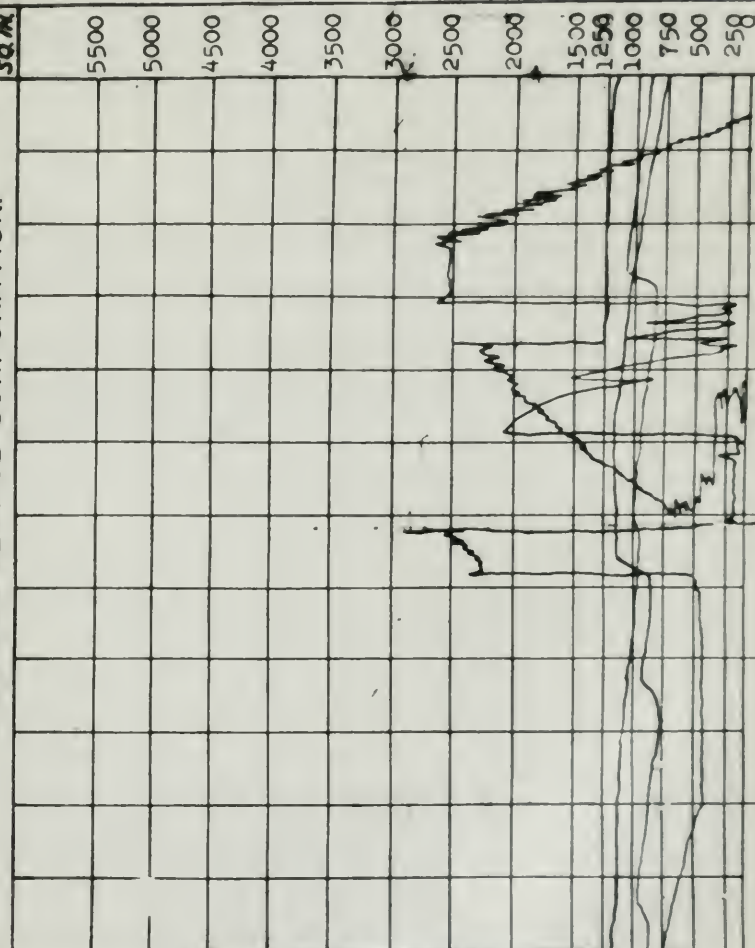
Approved _____

Our Representative James H. [Signature]

A ticket must be made with complete information for each run, whether successful or not.

M.O. JOHNSTON
OIL FIELD SERVICE CORPORATION.

**LBS
PER
SQ. IN.**



DATE. October 27, 1943
COMPANY. Cal-Bay Oil Co.
WELL. Parin #1
LOCATION. Concord
PACKER SET AT. 3760'
HOLE OPEN TO.
RECORDER NO.
CAPACITY.
RECORDER DEPTH.
CALIBRATED.
TEMPERATURE.
FLUID RISE.
FLOW PERIOD. 18 Hours
SHUT IN PERIOD.
TICKET NO. 6202
PRESSURE.

No 23529-B
Plt Exhibit No. N
Filed JAN 24 1947
C. W. Ellington, Clerk
By L. R. Ellington

M. O. JOHNSTON OIL FIELD SERVICE CORPORATION

3117 San Fernando Road

Los Angeles, California

—Phones

TEST TICKET

No 6202

Los Angeles . . . ALbany 0186

Bakersfield . . . Phone 2794

Venture Phone 5621

Stockton Phone 1636

Customer's Order No. _____

Date

10-26-43

Name

Coke-Box Co. Inc.

Well No.

1

Address to Mail Invoice

1344 + 1/2 + 1/4 + 1/8 + 1/16 + 1/32 + 1/64 + 1/128 + 1/256 + 1/512 + 1/1024 + 1/2048 + 1/4096 + 1/8192 + 1/16384 + 1/32768 + 1/65536 + 1/131072 + 1/262144 + 1/524288 + 1/1048576 + 1/2097152 + 1/4194304 + 1/8388608 + 1/16777216 + 1/33554432 + 1/67108864 + 1/134217728 + 1/268435456 + 1/536870912 + 1/1073741824 + 1/2147483648 + 1/4294967296 + 1/8589934592 + 1/17179869184 + 1/34359738368 + 1/68719476736 + 1/137438953472 + 1/274877906944 + 1/549755813888 + 1/1099511627776 + 1/2199023255552 + 1/4398046511104 + 1/8796093022208 + 1/17592186044416 + 1/35184372088832 + 1/70368744177664 + 1/140737488355328 + 1/281474976710656 + 1/562949953421312 + 1/1125899906842624 + 1/2251799813685248 + 1/4503599627370496 + 1/9007199254740992 + 1/18014398509481984 + 1/36028797018963968 + 1/72057594037927936 + 1/144115188075855872 + 1/288230376151711744 + 1/576460752303423488 + 1/1152921504606846976 + 1/2305843009213693952 + 1/4611686018427387904 + 1/9223372036854775808 + 1/18446744073709551616 + 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M.O. JOHNSTON

OIL FIELD SERVICE CORPORATION.

PLAINTIFF'S EXHIBIT R

(Endorsed): Filed Jan. 24, 1947.

LBS.
PER
SQ. IN.
3750
3500
3250
3000
2750
2500
2250
2000
1750
1500
1250
1000
750
500
250
0

DATE. 10-5-43
COMPANY Cal Bay
WELL. Farina #1
LOCATION Pittsburg
PACKER SET AT. 4287
HOLE OPEN TO. 4318
RECORDER NO. P-130
CAPACITY. 3750#
RECORDER DEPTH. 4311
CALIBRATED. September 24, 1943
TEMPERATURE.
FLUID RISE.
FLOW PERIOD. 18 MIN
SHUT IN PERIOD
TICKET NO. 6015
PRESSURE.

No 23529-6

Exhibit No. R

Filed JAN. 24 1947

C. W. Calbreath, Clerk

10/20/43

4- Hole Perf at 11251

John - Tester packed set 4200

Valve open at 8 PM

Closed at 7 PM -

42' mud

no water

3" H. Pipe

Per Jan - 2 at 4268 to 4271

22 - 3/8 hole -

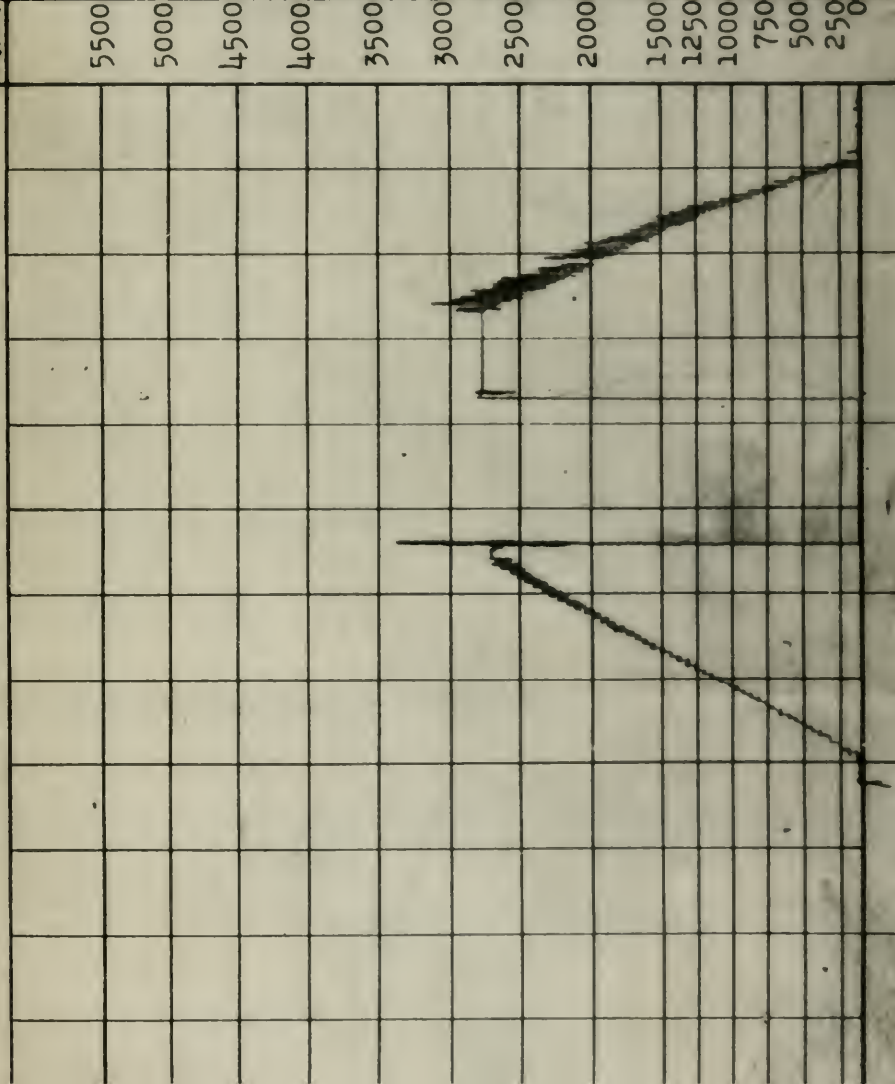
Butter shoe 4343

By C. R. Ellington Deputy Clerk
C. W. Carls, Clerk
Filed JAN 24 1947
Exhibit No. 5
No. 23529-5

7-17-44

M.O. JOHNSTON OIL FIELD SERVICE CORPORATION.

LBS.
PER
SQ. IN.



DATE. 10-20-43

COMPANY. Cal-Bay Corp

WELL. 1

LOCATION. Faria

PACKER SET AT. 4240'

HOLE OPEN TO. 4330'

RECORDER NO. 131

CAPACITY. 5500#

RECORDER DEPTH. 4255'

CALIBRATED. Oct. 19, 1943

TEMPERATURE. 5

FLUID RISE. 42'

FLOW PERIOD. 1 hr.

SHUT IN PERIOD. ✓

TICKET NO. 6757

PRESSURE.

LBS.
PER
SQ. IN.

DATE. 19/21

COMPANY. CAL. BAY

WELL.

LOCATION. Concord

PACKER SET AT. 4242

HOLE OPEN TO.

RECORDED NO. 131

CAPACITY. 5500#

RECORDED DEPTH.

CALIBRATED. Oct. 19, 1913

TEMPERATURE.

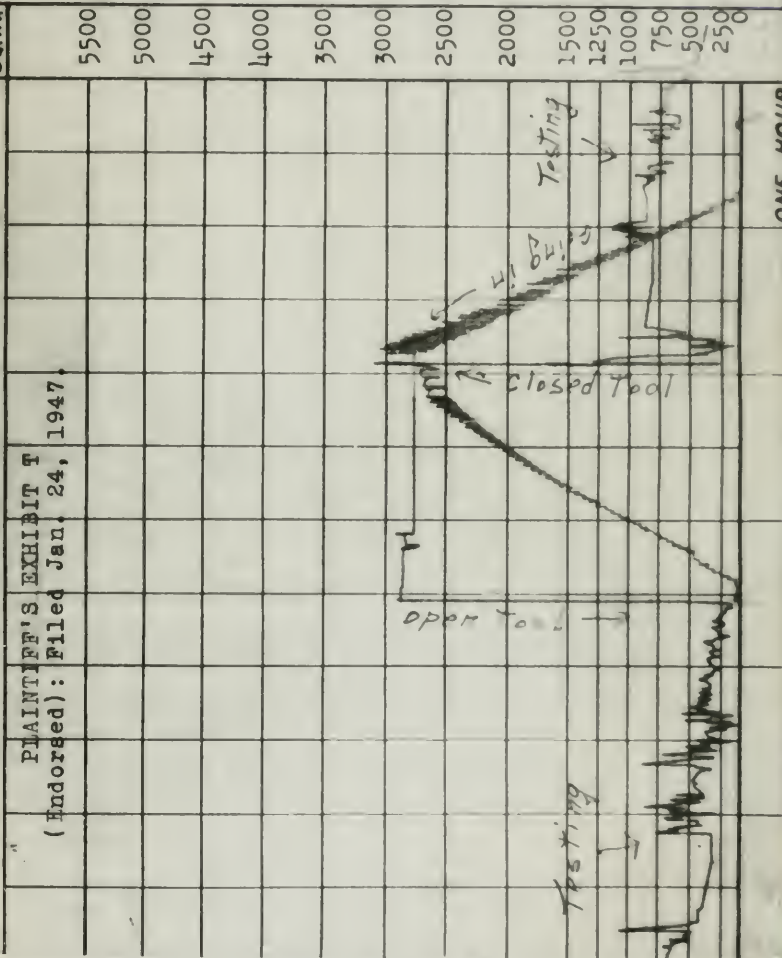
FLUID RISE &

FLOW PERIOD. / 7001-

SHUT IN PERIOD 3 1/2 HOURS

TICKET NO. 6758

PRESSURE.



No 23529.5

Plt 6 Exhibit No. 7.

Filed JAN 24 1967

C. W. Cribb, Jr., Clerk.

PLAINTIFF'S EXHIBIT U

HALLIBURTON OIL WELL CEMENTING CO.

CEMENTING TICKET

Date 11-27-44

Place Littleburg

Charge to Cal - Bay - Corp

Order No.

Mail Address

City Stockton

State Calif

Owner of Well

Cal - Bay - Corp

Contractor Owner

Well No. 1

Farm

Darby

County

Butte County

Sec.

Twp

Range

Depth of well

Depth of

Csg. Cement

4747

$\frac{1}{2}$ New

$\frac{1}{2}$ Used

Size

13.3

Size of Hole

Amount and

Kind of Cement

Kind of Job

Spotting Oil

Drill Pipe

3 1/2

Size

Rotary

Tails

Power

Truck No.

962

Special Tools

Plug Yes

No

In Plug Back From

To Approx

Floating Equipment Used

Time Required Mixing and Pumping Cement

1 hr

Rev.

Circulating

500

Maximum

900

Cement left

in Pipe by

Request

Necessity

Feet

Condition of Mud

OK

Condition of well

at time of Cementing

Stuck D.P.

Chemical Used

Price Reference No.

Truck

called out

8

AM On

location

3

PM Began

430

AM Job cost

530

Price Job

147.50

Other Chgs

32.00

Total Chg

\$179.50

REMARKS: pumped 18 Barrels of oil into drill pipe, put 10 Barrels out of drill pipe. They moved with their pumps and Bay Check #161. Discount \$10.00. Check for \$167.50

The above job was done under the supervision of the owner, operator, or his agent whose signature appears here below

Cement

W. G. Wendoff

Agent of Contractor or Operator

Helper

A. E. Crowe

District

1345

State

Calif

The following information is urgently requested in order that we may be fully advised and to enable us to keep our standard of service up to the highest point

Was operation of the

Was the work of the Cementing Crew

Was the Cementing job

Cementing Equipment satisfactory?

performed in a satisfactory manner?

satisfactorily completed?

SUGGESTIONS:

HOWCO 466—Southwestern 4371A, 50ms 11-1-43

No. 50960 E

Agent of Contractor or Operator

No. 23529

Exhibit No. U

Filed FEB 4 1947

C. V. [unclear]

By L. R. [unclear]

Deputy Clerk

STATE OF CALIFORNIA
DEPARTMENT OF NATURAL RESOURCES

DIVISION OF OIL AND GAS

COPY

Notice of Intention to Deepen, Redrill, Plug or Alter Casing in Well

This notice must be given fifteen days before work begins when possible

Concord

Calif. July 20

19 44

DIVISION OF OIL AND GAS

Gibson-Drexler Bldg.,

Santa Maria

Calif.

In compliance with Section 3203, Chapter 93, Statutes of 1939, notice is hereby given that it is our intention to commence the work of deepening, ~~redrilling, plugging or altering casing~~ at well No. "Faria" 1

(Cross out unnecessary words)

, Sec. 21, T. 2 N, R. 1 W, M. D. R. & M.

Field, Contra Costa County.

The present condition of the well is as follows: Total Depth 4398 Ft.

~~Casing: 12 1/2" oem. 618 ft.~~

Casing: 12 1/2" oem. 618 ft.

7" - 23 # oem. 4343 ft. with 150 oem.

Shot perf: 4 - 1/2" holes-3768 - 3769 ft.

4 - 3/8" holes-4250-4251 ft.-Test for Div. of Oil & Gas-Dry.

22 - 3/8" holes-4269 - 4276 ft.

9 - 1/2" holes-4461 - 4269 ft.

Reperf. 28 - 1/2" holes-4270 - 4279 ft.

Ran 2 1/2" tubing with packer above 4260 ft. swabbed hole dry. No water and little gas.

The proposed work is as follows:

Clean out hole and drill and core ahead to try to locate a gas sand.

Your Division will be notified in the event a commercial gas sand is uncovered.

Send Copies to
Cal-Bay Corp.,
Box 605, Brentwood,
Contra Costa County, Calif.

B. R. Norris
1009 Subway Terminal Bldg.,
Los Angeles, 13, Calif.

No 23529-B

U.S. Exhibit No. V
Filed FEB 4 1947

C. W. Chubbuck, Clerk

By L. R. Ellington
Deputy Clerk

Cal-Bay Corporation.
(Name of Operator)

By /s/ Byron B. Norris, Engineer

[Endorsed]: No. 11695. United States Circuit Court of Appeals for the Ninth Circuit. Cal Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria and Mae E. Roche, Appellants, vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed July 24, 1947.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals
for the Ninth Circuit

No. 11695

5,430 ACRES OF LAND, more or less, situate in
the County of Contra Costa, State of Cali-
fornia, CAL-BAY CORPORATION, MARIA
FARIA, JOSEPH FARIA, JR., EDWARD
FARIA and MAE E. ROCHE,
Appellants,

vs.

UNITED STATES OF AMERICA,
Appellee.

STATEMENT OF POINTS AND
DESIGNATION OF RECORD

To the Clerk of the United States Circuit Court of
Appeals for the Ninth Circuit, and to the
attorney for appellee:

In accordance with the provisions of Rule 19,
subdivision 6, of the Rules of Practice of the United
States Circuit Court of Appeals for the Ninth Cir-
cuit, the appellants, Cal-Bay Corporation, Maria
Faria, Joseph Faria, Jr., Edward Faria and Mae E.
Roche, file this Statement of Points and designa-
tion of Record on Appeal on their appeal in the
above entitled cause:

1. Appellants adopt on this appeal the
Statement of Points on Appeal filed with the
Clerk of the trial court, as incorporated in the
Record on Appeal;

2. Appellants desire to have printed the entire record, subject to any order of the above entitled court dispensing with the reproduction or printing of exhibits and providing for the consideration of the originals.

Dated: July 29, 1947.

/s/ A. J. SCAMPINI,
/s/ WALTER E. HETTMAN,
/s/ HERBERT CHAMBERLIN,
Attorneys for Appellants.

Received copy July 29, 1947.

/s/ M. MITCHELL BOURQUIN,
Special Assistant to the
Attorney General, for
Appellee, United States
of America.

[Endorsed]: Filed July 31, 1947.

[Title of Circuit Court of Appeals and Cause.]

APPLICATION FOR CONSIDERATION OF
ORIGINAL EXHIBITS AND ORDER DIS-
PENSING WITH PRINTING

Appellants, Cal-Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche, hereby apply to this Honorable Court for the consideration of Defendants' Exhibits 10, 11, 12, 13, 17, 25, 26, 28, 29, 32, 33, 37, and 38, and Plaintiff's Exhibits A, B, C, D, E, F, G, H, I,

J, K, L, M, O, P, W, X, Y, and Z, heretofore forwarded to the Clerk of this Court, pursuant to Rule 75(i) of the Federal Rules of Civil Procedure, on this appeal, and for an order dispensing with the reproduction or printing of these exhibits in the record on appeal.

This application is based on the affidavit of A. J. Scampini, verified July 29, 1947, and the stipulation of the attorney for the appellee, both hereto annexed.

Dated, July 29, 1947.

/s/ A. J. SCAMPINI,

/s/ WALTER E. HETTMAN,

/s/ HERBERT CHAMBERLIN,

Attorneys for said Appellants.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT IN SUPPORT OF APPLICATION
FOR CONSIDERATION OF THE
ORIGINAL EXHIBITS ON APPEAL

State of California,

City and County of San Francisco—ss.

A. J. Scampini, being duly sworn, deposes and says: he is one of the attorneys for the appellants Cal-Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche, and is familiar with the facts herein set forth.

Defendants' Exhibits 10, 11, 12, 13, 29, 32, 33,

37, and 38, and Plaintiff's Exhibits W, X, Y, Z, are large maps and by reason of their size and contents would be illegible if reduced to printing in the record; the same is true of Defendants' Exhibits 26 (photostat of notes and memoranda of one Mohr), 28 (Schlumberger report), and Plaintiff's Exhibit N (charts accompanying Johnston test); Defendants' Exhibit 17 is the log book of drilling operations of the oil or gas well involved in the litigation, and by reason of its bulk would unduly encumber the record and would be illegible if reduced to printing in the record; Defendants' Exhibit 25, and Plaintiff's Exhibits A to L, inclusive, M, O, P, are individual pages or sheets from the said log book (Defendants' Exhibit 17).

Wherefore, appellants pray for an order of the Court for a consideration of the originals of the said exhibits on this appeal and dispensing with the printing or reproduction thereof in the printed record on appeal.

/s/ A. J. SCAMPINI.

Subscribed and sworn to before me this 29th day of July, 1947.

[Seal] /s/ A. M. COGLIANDRO,

Notary Public in and for the City and County of
San Francisco, State of California.

My Commission Expires August 27, 1947.

[Title of Circuit Court of Appeals and Cause.]

ORDER DISPENSING WITH THE REPRODUCTION OR PRINTING OF EXHIBITS
AND PROVIDING FOR THE CONSIDERATION OF THE ORIGINALS

Upon application of appellants, Cal-Bay Corporation, Maria Faria, Joseph Faria, Jr., Edward Faria, and Mae E. Roche, the stipulation of appellee, United States of America, and the affidavit of A. J. Scampini, and good cause appearing,

It is Ordered that Defendants' Exhibits 10, 11, 12, 13, 17, 25, 26, 28, 29, 32, 33, 37, and 38, and Plaintiff's Exhibits A, B, C, D, E, F, G, H, I, J, K, L, M, O, P, W, X, Y, and Z, may be omitted from the printed record in the above-entitled appeal, and that the said exhibits may be considered in their original form as though set out in the printed record.

Dated: Aug. 6, 1947.

/s/ FRANCIS A. GARRECHT,

Judge, United States Circuit
Court of Appeals.

[Endorsed]: Filed Aug. 6, 1947.